
PUBLIC VERSION – CONFIDENTIAL MATERIAL OMITTED

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC f/k/a Qwest)	
Communications Company, LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon Virginia LLC;)	
Verizon Washington, D.C. Inc.; Verizon Maryland)	
LLC; Verizon Delaware LLC; Verizon Pennsylvania)	
LLC; Verizon New Jersey Inc.; Verizon New York)	
Inc.; Verizon New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

VERIZON'S ANSWER TO CENTURYLINK'S FORMAL COMPLAINT

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April 12, 2018

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April 12, 2018

Via HAND DELIVERY

Marlene H. Dortch
Office of the Secretary
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street
Washington D.C. 20554

Re: ***Century Link Communications, LLC f/k/a Qwest Communications Company, LLC v. Verizon Services Corp., et al., Docket No. 18-33, File No. EB-18-MD-001***

Dear Ms. Dortch:

Verizon Services Corp; Verizon Virginia LLC; Verizon Washington D.C., Inc.; Verizon Maryland LLC; Verizon Delaware LLC; Verizon Pennsylvania LLC; Verizon New Jersey Inc.; Verizon New York Inc.; Verizon New England Inc.; Verizon North LLC; Verizon South Inc. (collectively, Verizon) submits for filing the Public Version of its Answer to CenturyLink Communications LLC f/k/a Qwest Communications Company, LLC's ("CenturyLink") Formal Complaint ("Complaint"). Consistent with the Commission's rules and the Protective Order entered by the Commission's Enforcement Bureau on February 9, 2018, this Public Version is being filed on ECFS.

Verizon is filing by hand with the Secretary's Office an original and the required number of paper copies of the Confidential Version of the Answer. Electronic courtesy copies of both versions of the submission are also being provided on DVDs to the Secretary's office. All exhibits as well as native versions of supporting Excel spreadsheets and .zip files that could not be printed for the paper filings are included on the Confidential DVD. In addition, electronic copies of both the Confidential and Public Versions of the Answer are being served on counsel for CenturyLink.

Please contact me if you have any questions.

PUBLIC VERSION

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

Ms. Marlene H. Dortch

April 12, 2018

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Sincerely,

A handwritten signature in black ink, appearing to read 'J. Branson', with a large, stylized initial 'J' and a long, sweeping horizontal stroke at the end.

Joshua D. Branson

Enclosures

Cc: Marc S. Martin, Perkins Coie
Adam L. Sherr, CenturyLink Communications, LLC

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Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

VERIZON'S ANSWER TO CENTURYLINK'S FORMAL COMPLAINT

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* For ease of reference, Verizon repeats CenturyLink’s headings from its Formal Complaint. By doing so, Verizon does not admit that these headings are appropriate or accurate.

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Defendants (individually and collectively, “Verizon”), pursuant to 47 C.F.R. § 1.724(b) and the Enforcement Bureau’s February 9, 2018 and March 13, 2018 letter rulings, submit this Answer to the Formal Complaint (“Complaint” or “Compl.”) filed by CenturyLink Communications, LLC (“CenturyLink”) on February 26, 2018. Verizon states as follows:

[INTRODUCTION AND SUMMARY]¹

1. Verizon admits that CenturyLink has filed a Formal Complaint purporting to state a claim under the statutes cited in Paragraph 1. Verizon denies that CenturyLink’s claims have merit, and it denies that the Formal Complaint states a valid claim under any section of the Communications Act of 1934 (the “Act”)² or the Commission’s Rules.³

2. Verizon admits that CenturyLink purchased special-access services from Verizon, but lacks knowledge or information sufficient to form a belief as to how CenturyLink used Verizon’s special-access services to serve CenturyLink’s customers. Verizon admits that the parties executed a 2006 Master Services Agreement (“MSA”),⁴ a 2009 Service Agreement,⁵ and a 2014 Service Agreement.⁶ Verizon further admits that Exhibit B to the 2009 Service Agreement and Exhibit B to the 2014 Service Agreement were memorialized as contract tariffs filed with the Commission.⁷ One purpose of the 2009 and 2014 Service Agreements was to

¹ For ease of reference, Verizon repeats CenturyLink’s headings from its Formal Complaint. By doing so, Verizon does not admit that these headings are appropriate or accurate.

² See 47 U.S.C. § 151 *et seq.*

³ See 47 C.F.R. § 1.720 *et seq.*

⁴ The MSA is attached as Exhibit 1 to CenturyLink’s February 26, 2018 Formal Complaint. Verizon refers to exhibits attached to the Formal Complaint as “CTL Ex. __,” and it refers to exhibits attached to this Answer as “VZ Ex. __.”

⁵ See CTL Ex. 3 (“2009 Service Agreement,” executed May 6, 2009).

⁶ See CTL Ex. 5 (“2014 Service Agreement,” executed February 14, 2014).

⁷ Exhibit B to the 2009 Service Agreement was filed as a contract tariff and appeared at Verizon FCC Tariff No. 1 § 21, Option 57; Verizon FCC Tariff No. 11 § 32, Option 55; and Verizon FCC Tariff No. 14 § 21, Option 29. Exhibit B to the 2014 Service Agreement was filed

provide CenturyLink with discounts on tariffed special-access services, but that was not the sole purpose. As both Service Agreements made clear, Verizon provided those discounts in exchange for valuable “consideration” of its own: that CenturyLink “agree[] to abide by the requirements” set forth in the Service Agreements, including (but not limited to) the dispute-resolution requirements that governed Verizon’s determination of the quarterly Billing Credits.⁸

3. Verizon denies the allegations in Paragraph 3. Since the inception of the Price Flex Deal,⁹ Verizon applied a consistent methodology for calculating CenturyLink’s quarterly Billing Credits that complied with the Service Agreements and associated contract tariffs.¹⁰ For each of the first 25 quarters of the Price Flex Deal, CenturyLink affirmatively concurred in Verizon’s credit calculations without reservation.¹¹ For the final seven quarters, CenturyLink initially withheld its concurrence – asserting that Verizon’s proposed credit amounts were too low – before eventually agreeing with Verizon’s calculations and receiving the agreed-upon amounts.¹² At all relevant times, CenturyLink had all of the information it needed to evaluate

as a contract tariff and appeared at Verizon FCC Tariff No. 1 § 21, Option 65; Verizon FCC Tariff No. 11 § 32, Option 65; and Verizon FCC Tariff No. 14 § 21, Option 34. *See* CenturyLink Summary of Governing Agreements ¶ 1 n.1 (Feb. 26, 2018).

⁸ 2009 Service Agreement, Ex. B § 1; 2014 Service Agreement, Ex. B § 1; *see* 2009 Service Agreement, Ex. B § 7(e) (setting forth dispute-resolution requirements); 2014 Service Agreement, Ex. B § 8 (similar); *see also* Declaration of Christopher A. Alston ¶¶ 8-14 (“Alston Decl.”) (describing the parties’ intent in negotiating the Service Agreements).

⁹ The term “Price Flex Deal” refers to the arrangement by which Verizon provided discounted DS1 and DS3 special-access services to CenturyLink pursuant to the Service Agreements and contract tariffs. *See* CTL Ex. 4 § 1 (defining “Price Flex Deal”). CenturyLink’s subscription to the Price Flex Deal began on March 1, 2009, and was governed by the 2009 Service Agreement until February 28, 2014. *See* 2009 Service Agreement, Ex. B § 4. The Price Flex Deal continued for three years under the 2014 Service Agreement and expired on February 28, 2017. *See* 2014 Service Agreement, Ex. B § 4.

¹⁰ *See* Declaration of Patricia A. Mason ¶¶ 56-95 (“Mason Decl.”); *see generally* Verizon’s Legal Analysis at 49-65.

¹¹ *See* Mason Decl. ¶¶ 24-32; VZ Ex. 1 (“Credit History Chart”).

¹² *See* Mason Decl. ¶¶ 42-51; Credit History Chart at PY2Q2 – PY3Q4.

Verizon’s credit calculations, notify Verizon of any disagreements, and make an informed decision about whether to concur.¹³ Once CenturyLink provided concurrence and received the credits, however, the Billing Credits were “not subject to dispute.”¹⁴ Verizon denied CenturyLink’s claims based on those voluntary concurrences. The issues CenturyLink experienced with Verizon’s electronic dispute-submission system were immaterial.¹⁵

4. Verizon denies the allegations in Paragraph 4. Verizon calculated the quarterly credits in a manner that generally complied with the contracts and contract tariffs.¹⁶ In addition, CenturyLink’s claim that Verizon “miscount[ed]” the “circuit units it managed for CenturyLink” is inconsistent with the agreed-upon per-unit flat rates specified in the Service Agreements. In both the 2009 Service Agreement and the 2014 Service Agreement, CenturyLink agreed to per-unit “flat rates” – laid out in Attachment 1 to Exhibit B of both Agreements – that were predicated on the very circuit-counting methodology that CenturyLink now disputes.¹⁷ Were CenturyLink correct about the way Verizon should have counted the circuits, the mathematical

¹³ See Mason Decl. ¶¶ 24-32.

¹⁴ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

¹⁵ See Declaration of David Szol ¶¶ 11-16 (“Szol Decl.”) (detailing Verizon’s responses to CenturyLink’s disputes and describing its electronic dispute-submission system).

¹⁶ See *infra* ¶¶ 40-69; see generally Mason Decl. ¶¶ 56-95.

¹⁷ See 2009 Service Agreement, Ex. B § 7 (explaining that flat rates are calculated based on “benchmark average revenues per unit,” which in turn are “established at the time of subscription” based on the number of units CenturyLink bought in January-March 2009); *id.* Ex. B Att. 1 (detailing flat-rate calculation based on the number of “units” that CenturyLink actually bought during those three months); 2014 Service Agreement, Ex. B § 7(c) (explaining that flat rates are calculated based on “benchmark average revenues per unit,” which in turn are “established at the time of subscription” based on the number of units CenturyLink bought in October-December 2013); *id.* Ex. B Att. 1 (detailing flat-rate calculation based on the number of “units” that CenturyLink actually bought during those three months); see also Mason Decl. ¶¶ 96-101 (showing that only Verizon’s counting methodology yields the same number of “units” specified in the contractual formula for January-March 2009); Alston Decl. ¶¶ 26-31 & VZ Ex. 73 (analyzing effect that CenturyLink’s methodology would have on the 2014 flat rates).

formulas enumerated in both Service Agreements would have generated flat rates that were higher (and thus less favorable to CenturyLink) than the ones to which the parties agreed.¹⁸ Such a result conflicts not only with the plain language of both Service Agreements, but also with the core framework that the parties used to negotiate the Price Flex Deal.¹⁹ Verizon further denies that it improperly rejected CenturyLink’s disputes; Verizon correctly denied those claims because the Billing Credits were “not subject to dispute” once issued.²⁰

5. Verizon denies the allegations in Paragraph 5. Verizon admits that, for the final seven quarters of the Price Flex Deal, it refused to pay the Billing Credits until CenturyLink concurred in the full credit amount. But contrary to CenturyLink’s suggestion, there were no “undisputed amounts” during those quarters that Verizon should have paid. During each quarter, there was only one “Billing Credit” amount, and CenturyLink could either concur in the full amount or not. What CenturyLink called “disputed amounts” were actually just claims that Verizon’s proposed credit amount was too low. CenturyLink’s attempt to bifurcate the credits into separate “disputed” and “undisputed” amounts was practically unworkable and inconsistent with the language of the 2014 Service Agreement.²¹ Further, Verizon denies that CenturyLink was unable “to detect and dispute the full scope” of the errors it now alleges; in fact, CenturyLink had all of the information it needed to make an informed decision about whether to concur in Billing Credits in advance of those credits being paid.²² Finally, Verizon denies that it

¹⁸ See Mason Decl. ¶¶ 96-101; Alston Decl. ¶ 29 & VZ Ex. 73.

¹⁹ See Alston Decl. ¶¶ 15, 20, 25 (describing importance of flat rates to negotiations).

²⁰ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

²¹ See Mason Decl. ¶¶ 48-51; *see also* 2014 Service Agreement, Ex. B § 7(g) (contemplating a single “net Billing Credit” each quarter); *id.* § 8(f) (“Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer”).

²² See Mason Decl. ¶¶ 24-41.

has not paid the [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] in Billing Credits for 2016 Plan Year 3. Verizon paid those credits in a timely fashion after obtaining CenturyLink’s concurrence,²³ and it informed CenturyLink *before* it filed its Formal Complaint that the credits had been paid.²⁴

6. Paragraph 6 states a legal conclusion to which no response is required. Verizon denies that the Commission should award CenturyLink any of the relief it seeks.²⁵

[PARTIES]

7. Verizon admits the allegations in Paragraph 7.

8. Verizon admits the allegations in Paragraph 8, except that it notes that the proper name for the entity that CenturyLink is attempting to sue is “Verizon Services Corp.”

9. Verizon admits the allegations in Paragraph 9.

10. Verizon admits the allegations in Paragraph 10.

11. Verizon admits the allegations in Paragraph 11.

12. Verizon admits the allegations in Paragraph 12.

13. Verizon denies the allegations in Paragraph 13. Although Defendant Verizon Pennsylvania LLC is a Delaware limited liability company, its principal place of business is 900 Race Street, Philadelphia, PA 19107.

14. Verizon admits the allegations in Paragraph 14.

15. Verizon admits the allegations in Paragraph 15.

16. Verizon admits the allegations in Paragraph 16.

²³ See *id.* ¶ 47; Credit History Chart at PY3Q1 – PY3Q4.

²⁴ See VZ Ex. 71 (2/22/18 Email from K. Johnson Sawyer to J. Romero).

²⁵ See *generally* Verizon’s Legal Analysis.

17. Verizon denies the allegations in Paragraph 17. Although Defendant Verizon North LLC is a Delaware limited liability company, its principal place of business is 900 Race Street, Philadelphia, PA 19107. Its former name is “VZ North Retain LLC.”

18. Verizon admits the allegations in Paragraph 18.

19. Verizon admits the allegations in Paragraph 19.

[PROCEDURAL HISTORY]

20. Verizon admits the allegations in Paragraph 20, except that it denies that CenturyLink’s March 21, 2016 dispute-notice letter was “provided for under the MSA and related agreements.” As Verizon explained in response to that letter, the contractual dispute-resolution processes that CenturyLink attempted to invoke do not apply to quarterly Billing Credits, which are final and not subject to dispute once paid.²⁶

21. Verizon admits the allegations in Paragraph 21, except notes that the Formal Complaint contains certain allegations (described at Paragraph 151 below) that do not relate back to the Informal Complaint and so are untimely under 47 C.F.R. § 1.718.

[JURISDICTION]

22. Verizon admits the allegations in Paragraph 22. Verizon denies that any of the defendant Verizon companies have violated the Act or otherwise acted unlawfully.

[STATEMENT REGARDING SUPPORTING MATERIAL AND REQUIRED CERTIFICATIONS]

23. Verizon admits the allegations in Paragraph 23.

24. Verizon admits the allegations in Paragraph 24.

²⁶ See CTL Ex. 40.23 (5/31/16 Ltr. from D. Szol to P. Welch (“Szol Letter”)) at 1-3.

[FACTS IN SUPPORT OF THE FORMAL COMPLAINT]**[I. BACKGROUND]**

25. Verizon admits the allegations in Paragraph 25.

26. Verizon admits that it delivered discounts on qualifying special-access services to CenturyLink under the Price Flex Deal by paying CenturyLink quarterly Billing Credits. The Billing Credits were calculated as the difference between (1) the undisputed dollar amounts that CenturyLink paid at Verizon’s standard monthly tariffed rates during the applicable quarter; and (2) discounted dollar amounts that were calculated by multiplying the number of “units” in each service type by the corresponding “flat rates” specified in the Service Agreements.²⁷ Verizon admits that the Billing Credits – including the concurrence and dispute-resolution provisions governing those credits – were one important feature of the Price Flex Deal.²⁸ Verizon denies that its credit calculations violated those Agreements or contract tariffs.²⁹ Verizon further denies that its information reporting was “routinely inaccurate” or “provided in an untimely manner.” Verizon’s reporting was consistently accurate and timely provided.³⁰

[A. Summary of Relevant Agreements Between CenturyLink and Verizon]

27. Verizon admits that the MSA generally governs Verizon’s provision to CenturyLink of various non-tariffed services. Verizon further admits that the MSA is composed of its own terms, the terms of its Attachments, and the tariffs it incorporates.³¹ Verizon denies that the MSA governed the parties’ Price Flex Deal. The MSA provided a general framework

²⁷ See 2009 Service Agreement, Ex. B § 7(a)-(d); 2014 Service Agreement, Ex. B § 7.

²⁸ See 2009 Service Agreement, Ex. B § 7(e); 2014 Service Agreement, Ex. B § 8; *see also* Mason Decl. ¶¶ 9-23 (describing mechanics of concurrence and dispute-resolution process).

²⁹ See *infra* ¶¶ 40-69.

³⁰ See Mason Decl. ¶¶ 24-41.

³¹ See CTL Ex. 1 (“MSA”) § 1.

through which Verizon provided certain services (such as Ethernet) that the Commission has forborne from regulating.³² But the MSA did not govern Verizon’s provision of tariffed DS1 and DS3 services; those services were instead governed by the Service Agreements and associated contract tariffs. Neither of those Agreements was designated as an Attachment to the MSA.³³ Thus, while CenturyLink is correct that the MSA “provided for a dispute process and claims submission procedure,” those processes were inapplicable to Verizon’s calculation of the quarterly Billing Credits under the 2009 and 2014 Service Agreements.³⁴

28. Verizon admits the allegations in Paragraph 28.

29. Verizon’s response to CenturyLink’s Summary of Governing Agreements is set forth in Tab B.

[B. Verizon’s Flat Rate Tariffed Pricing]

30. Verizon admits that the Price Flex Deal provided CenturyLink with discounts on qualifying special-access services through Billing Credits that were pegged to per-unit flat rates specified in the 2009 and 2014 Service Agreements. The flat rates were fixed by “Plan Year” – running each year from March 1 through February 28 – for each service type covered by the Service Agreements.³⁵ CenturyLink’s Table 1 accurately states the flat rates applicable to each service type for each Plan Year. But Verizon denies that the quarterly Billing Credits were “equal to the difference between the undiscounted rates and the discounted rates under the

³² See, e.g., MSA § 1 (applying to services described in “Attachments” to the MSA itself); CTL Ex. 6 (“MSA Att. 2”) § 1.1 (governing Ethernet service); see generally 47 U.S.C. § 160.

³³ See Alston Decl. ¶ 7.

³⁴ Compare MSA § 11.3 (dispute-resolution process governing charges **[[BEGIN CONFIDENTIAL]]** **CONFIDENTIAL** **[[END CONFIDENTIAL]]**) with 2009 Service Agreement, Ex. B § 7(e)(vii) (“The Billing Credits as determined by Verizon are not subject to dispute.”), and 2014 Service Agreement, Ex. B § 8(f).

³⁵ See 2009 Service Agreement, Ex. B § 7(a)-(d); 2014 Service Agreement, Ex. B § 7.

contract tariffs.”³⁶ Although the difference between Verizon’s standard and discounted rates affected the calculation of the Billing Credits, the Credits themselves were not rates (nor were they the differential between two rates). Instead, the Billing Credits represented the difference between (1) the undisputed *dollar amounts* that CenturyLink paid at Verizon’s standard monthly tariffed rates during the applicable quarter; and (2) discounted *dollar amounts* calculated by multiplying the number of “units” in each service type by the corresponding “flat rates.”³⁷

31. Verizon admits that Paragraph 31 accurately quotes parts of the 2009 and 2014 Service Agreements, but denies that Paragraph 31 accurately characterizes the purpose of those Agreements. Verizon provided CenturyLink with discounts on qualifying special-access services – implemented through quarterly Billing Credits – in exchange for CenturyLink’s agreement to a number of terms, including revenue commitments and a streamlined process that barred CenturyLink from disputing Billing Credits once they had been paid.³⁸ CenturyLink’s commitments under the Price Flex Deal were just as important to the parties’ bargain as was Verizon’s agreement to provide discounted rates through Billing Credits.³⁹

32. Verizon admits that the 2009 and 2014 Service Agreements required Verizon to pay quarterly Billing Credits that were calculated in part based on the number of “units” in each

³⁶ See 2009 Service Agreement, Ex. B § 7; 2014 Service Agreement, Ex. B § 7 (explaining credit-calculation formula).

³⁷ See *id.*

³⁸ See 2009 Service Agreement, Ex. B § 1 (providing credits and discounts in exchange for CenturyLink’s agreement to the contract’s “requirements”); *id.* § 3 (volume commitments); *id.* § 7(e) (dispute-resolution provisions); *id.* §§ 15-16 (describing watermark and volume commitments); 2014 Service Agreement, Ex. B § 1 (providing credits and discounts in exchange for CenturyLink’s agreement to contract’s “requirements”); *id.* § 3 (volume commitments); *id.* § 7(h) (describing annual true-up process based on CenturyLink’s overall “TDM Annual Revenue Commitment”); *id.* § 8 (dispute provisions).

³⁹ See Alston Decl. ¶¶ 8-12.

service class.⁴⁰ Verizon denies that it “habitually erred in designating circuits as qualifying units.” With the exception of a few isolated, inadvertent errors, Verizon’s calculations were generally consistent with the Service Agreements, the tariffs, and the specific flat rates that underpinned the Price Flex Deal.⁴¹ Verizon also denies that it assumed sole responsibility for “properly calculat[ing]” the Billing Credits. As the 2014 Service Agreement made clear, CenturyLink had an obligation to (and did in fact) review Verizon’s proposed credit calculations and concur in those calculations before Verizon could pay each credit.⁴²

33. Verizon admits that the 2009 and 2014 Service Agreements stated that “Verizon shall provide the net Billing Credit for each Quarter on [CenturyLink’s Carrier Access Billing System] billing by no later than sixty (60) days following the end of the applicable Quarter.”⁴³ Verizon’s practice was to make a reasonable effort to pay the Billing Credit within 60 days of the end of each quarter.⁴⁴ Beginning with 2013 PY5Q2, however, the Billing Credits generally were not paid to CenturyLink within 60 days of the end of the quarter.⁴⁵ The delays were attributable to two factors. First, Verizon was required to exclude from the credit calculations any monthly charges that were subject to open disputes as of the 30th day after the end of the quarter.⁴⁶ On some occasions, CenturyLink’s delays in agreeing to the amount of open disputes

⁴⁰ 2009 Service Agreement, Ex. B § 7(a)-(c); 2014 Service Agreement, Ex. B § 7(d)-(f).

⁴¹ *See infra* ¶¶ 40-69.

⁴² *See* 2014 Service Agreement, Ex. B § 8(f) (“Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer”); *see* Mason Decl. ¶¶ 9-23 (describing concurrence process).

⁴³ 2009 Service Agreement, Ex. B § 7(d); 2014 Service Agreement, Ex. B § 7(g); *see* Compl. ¶ 33 n.41 (citing applicable provisions of contract tariffs).

⁴⁴ *See* Mason Decl. ¶¶ 52-55.

⁴⁵ *See* Credit History Chart at PY5Q2 – PY3Q4.

⁴⁶ *See* 2009 Service Agreement, Ex. B § 7(e)(i) (“Verizon shall not include in the calculation of the Billing Credits any amounts which are unpaid and/or disputed by Customer as of the

prevented Verizon from performing the final credit calculations within 60 days.⁴⁷ Second, Verizon could issue a Billing Credit only after obtaining CenturyLink's final concurrence in the amount of the credit.⁴⁸ Beginning in 2015 PY2Q2, CenturyLink regularly delayed in providing Verizon with the necessary concurrences.⁴⁹ CenturyLink's failure to provide timely concurrences during those quarters prevented Verizon from meeting the 60-day deadline. In virtually every case, Verizon promptly issued the Billing Credit once CenturyLink supplied the necessary concurrence.⁵⁰ Finally, Verizon denies that the Plan Year 3 credits remain overdue; they were paid before CenturyLink filed its Formal Complaint.⁵¹

34. Verizon denies the allegations in Paragraph 34.

[C. Verizon's Tariff Violations and Unjust and Unreasonable Practices]

35. Paragraph 35 states a legal conclusion to which no response is required. Verizon denies that its practices were unlawful. Verizon responds to each of the bullet points in Paragraph 35 in its responses to Paragraphs 40-69 below.

36. Verizon denies the allegations in Paragraph 36. Verizon denies that it overcharged CenturyLink under the Price Flex Deal. Even if CenturyLink were correct that overcharging occurred, Verizon further denies that CenturyLink's Tables 2 or 3 accurately quantify those overcharges. The six dispute categories in those tables overlap and involve

thirtieth (30th) day following the end of each Quarter."); 2014 Service Agreement, Ex. B § 8(a) (same); *see also* Mason Decl. ¶¶ 13-14 (describing dispute-calculation process).

⁴⁷ *See* Mason Decl. ¶ 53.

⁴⁸ *See* 2014 Service Agreement, Ex. B § 8(f).

⁴⁹ *See* Mason Decl. ¶¶ 42-51.

⁵⁰ *See id.* ¶¶ 54-55.

⁵¹ *See* VZ Ex. 71.

duplicates of many circuits.⁵² As CenturyLink has admitted, that causes its asserted damages figure to exceed the total value of the circuits it disputed – even if (as CenturyLink alleges) there were multiple reasons the circuit should not have counted as a “unit.”⁵³ By CenturyLink’s own admission, therefore, its Tables 2 and 3 are inaccurate. In addition, the damages amount asserted in the Complaint fails to take into account that CenturyLink benefited in offsetting ways from many of the errors it alleges, including with respect to Verizon’s treatment of disconnected circuits⁵⁴ and the formula error responsible for CenturyLink’s fourth category of disputes.⁵⁵

37. Verizon admits that it had to count qualifying “units” to calculate the Billing Credit each quarter. Verizon further admits that, holding all else constant, an increase in the number of “units” would lead to a decrease in the credit amount. Verizon denies that it “chronically over-counted qualifying units” or “chronically under-calculat[ed] CenturyLink’s credits.”⁵⁶

38. Verizon admits that three Verizon operating companies were sold to Frontier in April 2016. Verizon further admits that Frontier continued to provide special-access services to CenturyLink under the same contract tariffs. Verizon lacks knowledge or information sufficient

⁵² Compare, e.g., CTL Ex. 31 Tab “Detail,” Row 87 (disputing Circuit 1017 T3Z FRFDNJFAHCA FRFDNJFAK31 for March 2013), with CTL Ex. 32 Tab “Detail,” Row 8 (disputing same circuit in same month for a different reason).

⁵³ See CenturyLink’s Reply to Verizon Response at 4 n.2, *CenturyLink Commc’ns, LLC v. Verizon Servs. Corp.*, No. EB-16-MDIC-0015 (FCC filed Nov. 18, 2016) (“Due to the resulting overlap between the categories, the total combined dispute categories (approximately [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]]”).

⁵⁴ See Mason Decl. ¶ 75 (describing windfall discount that CenturyLink obtained as a result of Verizon’s treatment of fractionally billed revenue).

⁵⁵ Compare Compl. ¶¶ 57-59 with Mason Decl. ¶¶ 87-89 (discussing Category 4 disputes).

⁵⁶ See generally Mason Decl. ¶¶ 56-95.

to form a belief as to whether Frontier counted circuits differently than Verizon. The remaining allegations in Paragraph 38 are legal conclusions to which no response is required.

39. Verizon denies the allegations in Paragraph 39, for the reasons explained below.

[1. Verizon Overcounted Equivalents of DS3 CLS Units in FMS LATAs]

40. Verizon admits that, until July 2014, CenturyLink subscribed to Verizon’s Facilities Management Service (“FMS”), under which Verizon arranged special-access circuits dedicated to CenturyLink across Verizon’s network at its own discretion and billed CenturyLink on a DS0-equivalent basis.⁵⁷ That meant that, if CenturyLink used only a portion of a DS3 circuit under FMS, it paid Verizon only for the portion of the circuit it actually used. Verizon admits that it counted CenturyLink’s DS3 CLF circuits in FMS territories as full “DS3 CLF Units,”⁵⁸ regardless of whether the DS3 circuits were fully subscribed. Verizon denies that this methodology was inconsistent with the Service Agreements or contract tariffs.⁵⁹

41. Verizon admits the allegations in Paragraph 41. Verizon emphasizes, consistent with CenturyLink’s footnote 52, that the 2014 Service Agreement (unlike the 2009 Service Agreement) did not require circuits to bill any particular universal service ordering code (“USOC”) to qualify as a “unit” for purposes of the Billing Credits.⁶⁰

⁵⁷ See CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(A); CTL Ex. 25, Verizon FCC Tariff No. 11 § 7.2.16(A); Public Notice, *Comments Invited on Application of Verizon Delaware LLC, Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia Inc. to Discontinue Domestic Telecommunications Services*, 23 FCC Rcd 18108, 18108-09 (2008) (“FMS Public Notice”).

⁵⁸ 2009 Service Agreement, Ex. B § 2; 2014 Service Agreement, Ex. B § 2(s).

⁵⁹ See Mason Decl. ¶¶ 58-68; Verizon’s Legal Analysis at 51-54.

⁶⁰ Compare 2009 Service Agreement, Ex. B § 5(a) (listing qualifying USOCs for each service class), with 2014 Service Agreement, Ex. B § 6 (omitting that requirement).

42. Verizon admits that its monthly invoices charged CenturyLink for DS3 CLF circuits in FMS territories on a DS0-equivalent basis. Verizon further admits that it counted those circuits as “DS3 CLF Units” in calculating the Billing Credits. Verizon denies that its methodology was improper. Contrary to CenturyLink’s assertion, those circuits were associated with Qualifying Monthly Recurring Charges (“MRCs”) for DS3 service.⁶¹ That those charges were calculated at the DS0 level rather than at the DS3 level does not change the fact that the charges were for “DS3 CLF Qualifying Services” as defined in the Service Agreements.⁶² It is therefore inaccurate to refer to those circuits as “\$0 DS3 CLF circuits.” Verizon did not charge \$0 for those circuits; it charged for those circuits in proportion to the number of DS0 channels that CenturyLink used.⁶³

43. Verizon denies that CenturyLink’s FMS DS3 CLF circuits “were not units under the tariffs,” for the reasons explained in response to Paragraph 42. Verizon thus agrees with CenturyLink that “Verizon was entitled to compensation based on its provision of the underlying [DS3 CLF] services,” but it denies that CenturyLink has devised a proper way to calculate that compensation. The 2009 and 2014 Service Agreements contain no support for CenturyLink’s DS3-equivalency calculations, and CenturyLink cites none. Under the contracts, a DS3 CLF

⁶¹ See Mason Decl. ¶¶ 62-65 (detailing examples of DS3 CLF circuit billed on a DS0-equivalent basis that was also associated with a DS3 CLF Class of Service (XDH1X) and USOCs (MXNM5 and TMW5X)); *see generally* Verizon’s Legal Analysis at 53.

⁶² See 2009 Service Agreement, Ex. B § 5(a)(ii) (defining DS3 CLF Qualifying Services as rate elements with an eligible Class of Service and USOC); *see also* 2014 Service Agreement, Ex. B § 2(k) (defining “Billed DS3 CLF Service Revenue” as paid “Qualifying Monthly Recurring Charges” billed to CenturyLink for “DS3 CLF Services”); *id.* § 6 (defining “Qualifying Monthly Recurring Charges” as charges billed for “a particular service for a particular time frame”).

⁶³ See Mason Decl. ¶¶ 60-68.

circuit either counted as a “unit” or it did not; there was no middle ground.⁶⁴ And even CenturyLink admits that it is implausible to claim that those circuits should not count at all.⁶⁵

44. Verizon admits that there are 672 DS0-equivalent channels in a DS3 but denies the remaining allegations in Paragraph 44. CenturyLink’s calculations do not demonstrate any overcharge for DS3 CLF circuits. Those calculations appear to be based not on the Service Agreements or contract tariffs, but on a brand-new formula devised by CenturyLink to determine the “compensation” it thinks should be “due for the portion of the \$0 DS3 CLF circuits in the FMS LATAs that CenturyLink utilized.” That is not a proper way to calculate Billing Credits under a detailed contract negotiated by two sophisticated parties.⁶⁶ Under the contracts, the FMS circuits that CenturyLink now disputes billed Qualifying MRCs – proportioned on a DS0-equivalent basis, but still for DS3 service classes and USOCs – and so were “DS3 CLF Units.”⁶⁷

45. Verizon admits that Table 4 refers to DS3 CLF circuits that Verizon counted as “units” for January 2014. Verizon denies that those circuits had \$0 in Billed MRCs.⁶⁸

46. Verizon admits that Table 5 depicts DS3 CLF circuits that Verizon counted as “units” from January 2014. Verizon denies that those circuits had \$0 in Billed MRCs.⁶⁹

Verizon similarly denies that CenturyLink has accurately listed the USOCs that these circuits

⁶⁴ See 2009 Service Agreement, Ex. B § 2 (defining “DS3 CLF Unit”); 2014 Service Agreement, Ex. B § 2(f) (defining “Billed DS3 CLF Unit”).

⁶⁵ See Compl. ¶ 43 (disclaiming argument that CenturyLink was “entitled to a credit that did not incorporate any DS3 CLF units in the FMS LATAs”).

⁶⁶ See Memorandum Opinion and Order, *Ryder Commc’ns, Inc. v. AT&T Corp.*, 18 FCC Rcd 13603, ¶ 24 (2003) (holding that claims were precluded by contract tariff and “Billing Agreement,” and refusing to “effectively rewrite” contract terms to “avoid the allegedly harsh results of the parties’ deal”).

⁶⁷ See Verizon’s Legal Analysis at 51-54.

⁶⁸ See Mason Decl. ¶¶ 62-63.

⁶⁹ See *id.* ¶ 64.

were billing. Verizon further denies that the “class of service designation ‘XDH3X’” does not appear in the DS3 list in the tariffs; the 2009 Service Agreement (which is the only one that imposes a Class-of-Service and USOC requirement) expressly identifies XDH3X as a qualifying Class of Service for DS3 CLF Units.⁷⁰ Verizon properly classified each circuit in Table 5 as a DS3 CLF Unit under the 2009 Service Agreement.⁷¹

47. Verizon denies the allegations in Paragraph 47. Although Verizon admits that CenturyLink’s Exhibit 31 generally identifies DS3 CLF circuits in FMS territories that Verizon counted as “units” for purposes of the Billing Credits, it denies that those circuits had \$0 in qualifying charges. Each was subject to the general principle explained above: though they billed monthly charges proportioned on a DS0-equivalent basis, the charges remained for qualifying DS3 service under the 2009 Service Agreement.⁷²

[2. Verizon Counted Units Without Qualifying USOCs or MRCs in the Quarterly Credit Calculation in Non-FMS LATAs]

48. Verizon admits that circuits qualified as “units” under the 2009 Service Agreement only if the circuits were associated with a qualifying MRC and a qualifying USOC; under the 2014 Service Agreement, the USOC requirement was eliminated.⁷³ Verizon admits that it counted some circuits that did not bill a qualifying USOC but denies that most of CenturyLink’s alleged disputes demonstrate any such error.⁷⁴

⁷⁰ See 2009 Service Agreement, Ex. B § 5(a)(ii).

⁷¹ See Mason Decl. ¶ 64; VZ Exs. 58, 59.

⁷² See Mason Decl. ¶¶ 60-68.

⁷³ Compare 2009 Service Agreement, Ex. B § 5(a), with 2014 Service Agreement, Ex. B § 6.

⁷⁴ See Mason Decl. ¶¶ 69-78.

49. Verizon admits that the qualifying USOCs and MRCs under the 2009 Service Agreement were for specified DS1 and DS3 services purchased under the Price Flex Deal.⁷⁵ The same was not true under the 2014 Service Agreement: qualifying MRCs under that Agreement encompassed charges for all “Special Access DS1 Services,” “Special Access DS3 CLF Services,” and “Special Access DS3 CLS Services,” which were defined based on bandwidth and were not limited to particular USOCs.⁷⁶ Verizon denies that CenturyLink has identified any ineligible UNE or local interconnection circuits.⁷⁷ As for the OC48 “port rider” issue, Verizon admits that it counted certain DS3 circuits that rode an OC48 and thus lacked a qualifying USOC under the 2009 Service Agreement. Despite these isolated and inadvertent errors, Verizon’s methodology for counting the circuits that CenturyLink identifies was generally correct.⁷⁸

50. Verizon admits that it should not have counted the circuit listed in CenturyLink’s Table 6 (44.HFFS.400023..CV) as a “unit” from July through September 2015, because that circuit did not bill any MRCs during those months.⁷⁹ It was inadvertently included in Verizon’s unit count because it billed intrastate charges under an individual-case-basis contract.

51. Verizon admits that CenturyLink submitted certain claims to Verizon purporting to challenge Verizon’s calculation of the Billing Credits. Verizon denies that the amount

⁷⁵ See 2009 Service Agreement, Ex. B § 5(a)(i)-(iii); *see also id.* § 5(b) (defining MRCs as charges under the “[Class-of-Service] and USOC combinations” specified in the contract).

⁷⁶ See 2014 Service Agreement, Ex. B § 6 (defining Qualifying MRCs in terms of charges for “a particular service for a particular time frame”); *id.* § 2(z)-(bb) (defining services without reference to USOC or Class of Service).

⁷⁷ See Mason Decl. ¶ 76 & n.154.

⁷⁸ See *id.* ¶¶ 69-78.

⁷⁹ See VZ Ex. 60 (analyzing CenturyLink’s Exhibit 32 on a circuit-by-circuit basis).

CenturyLink claims it is owed for these disputes is accurate. Verizon’s response to CenturyLink’s so-called “detailed accounting” of these disputes is set forth in Exhibit 60.⁸⁰

[3. Double-Counting of “Meet-Point” Circuits]

52. Verizon admits that “meet-point circuits” are circuits for which two or more Verizon operating companies bill under separate Billing Account Numbers (“BANs”). Verizon further admits that it counted meet-point circuits as multiple “units,” because those circuits billed charges distributed across multiple CenturyLink BANs. Verizon denies that this methodology was inconsistent with the Service Agreements or contract tariffs.⁸¹ In addition, the Service Agreements’ “flat rates” were predicated on Verizon’s counting methodology, including its practice of counting meet-point circuits as multiple “units.”⁸² Were CenturyLink correct that a meet-point circuit should count as only one “unit,” the formulas in the Service Agreements would have yielded higher flat rates.⁸³ CenturyLink’s position is therefore inconsistent with the Service Agreements and the core framework the parties used to negotiate the Price Flex Deal.⁸⁴

53. Verizon admits that it counted meet-point circuits as two “units” for purposes of calculating the Billing Credits. Verizon denies that this methodology was improper. Verizon admits that Paragraph 53 accurately quotes from a purported “dispute” notice that CenturyLink sent Verizon, but denies that it overcharged for Circuit 101 T3 BSHPCAXG LSANCA11W33.⁸⁵

54. Verizon admits that CenturyLink referenced Circuit 101 T3 BSHPCAXG LSANCA11W33 in several purported “dispute” submissions, including for PY1Q3, PY1Q4, and

⁸⁰ See Mason Decl. ¶ 76.

⁸¹ See *id.* ¶¶ 79-86.

⁸² See *id.* ¶¶ 96-101; Alston Decl. ¶¶ 26-31.

⁸³ See Mason Decl. ¶¶ 96-101 & VZ Ex. 68; Alston Decl. ¶¶ 26-31 & VZ Ex. 73.

⁸⁴ See Alston Decl. ¶¶ 15-31 (describing negotiating history).

⁸⁵ See Mason Decl. ¶¶ 85-86 & VZ Ex. 64.

PY2Q1. Verizon denies that it failed to investigate or correct this issue; Verizon counted that circuit properly.⁸⁶ Verizon admits that CenturyLink’s Table 7 mathematically depicts a comparison between Verizon’s and CenturyLink’s credit calculations for certain meet-point circuits. Verizon denies that CenturyLink’s proposed credit calculations are proper.

55. Verizon admits that DS3 CLS circuits had a flat rate of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** for Plan Year 2. Verizon denies the remaining allegations in Paragraph 55. Verizon properly counted the three circuits listed in CenturyLink’s Table 7 as two “units” per month.⁸⁷

56. Verizon denies the allegations in Paragraph 56. Verizon’s response to CenturyLink’s so-called “detailed accounting” of this dispute category is set forth in Exhibit 64.

[4. Misdesignating DS3 CLF Units as DS3 CLS Units]

57. Verizon admits that it inadvertently misclassified certain DS3 CLF circuits as more-expensive DS3 CLS circuits during four months: April 2014, July 2014, August 2014, and March 2015.⁸⁸ Verizon admits one of those inadvertently misclassified circuits was Circuit 101 T3Z BGVLPA BRK14 PITBPALMW81. Verizon denies that these misclassifications “resulted in additional overcharges to CenturyLink.” The misclassifications that CenturyLink identifies were due to a formula error that was inadvertently introduced into Verizon’s credit-calculation spreadsheets as they were updated during the transition from the 2009 to the 2014 Service Agreement.⁸⁹ That formula error – based on the way it analyzed information from Verizon’s system – resulted in certain DS3 CLF circuits being classified as DS3 CLS circuits for purposes

⁸⁶ See VZ Ex. 64 (at, *e.g.*, Rows 2, 22).

⁸⁷ See Mason Decl. ¶¶ 85-86 & VZ Ex. 64.

⁸⁸ See Mason Decl. ¶ 87.

⁸⁹ See *id.*

of the Billing Credit.⁹⁰ At the same time, however, that same formula error also led to several converse misclassifications that *benefited* CenturyLink: other DS3 CLS circuits were inadvertently classified as less-expensive DS3 CLF circuits.⁹¹ Had the formula error been identified and corrected at the time, the net result (including fixing all of the errors CenturyLink identifies in its Formal Complaint) would have been an **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** *reduction* in the total Billing Credits due to CenturyLink for the three quarters at issue.⁹²

58. Verizon admits that CenturyLink has identified certain DS3 CLF circuits that were improperly classified. Verizon has not issued any additional credits back to CenturyLink because, pursuant to the procedure set forth in the Service Agreements, CenturyLink fully concurred in the credit amount prior to Verizon issuing the credit, and because the underlying formula error worked to CenturyLink’s ultimate advantage.⁹³

59. Verizon denies the allegations in Paragraph 59. Verizon’s response to CenturyLink’s so-called “detailed accounting” of this dispute category is set forth in Exhibits 65 and 66.

[5. Misdesignating DS0 Circuits as DS1 Units]

60. Verizon denies the allegations in Paragraph 60. CenturyLink raises this dispute as to only two circuits: 11.XHGS.129187..PA and 11.XHGS.131582..PA.⁹⁴ Verizon correctly counted the channel terminations associated with both of those circuits as DS1 “units” for

⁹⁰ *See id.*

⁹¹ *See id.* ¶ 88.

⁹² *See id.* ¶¶ 88-89 & VZ Ex. 66.

⁹³ *See* Mason Decl. ¶ 89.

⁹⁴ *See* CTL Ex. 35 (listing only those two circuits in dispute); Declaration of Tiffany Brown ¶ 27 (“Brown Decl.”) (referring to Exhibit 35 as a “chart of all DS0 circuits improperly counted as DS1 units”).

purposes of the Billing Credits.⁹⁵ Both circuits corresponded to a Class of Service – XDH1X – that refers to DS1 service.⁹⁶ Further, the channel-termination USOC that Verizon billed for both circuits matched a USOC specifically identified as DS1 Qualifying Services in the 2009 Service Agreement.⁹⁷ Verizon properly classified both circuits for that reason alone. With respect to Circuit 11.XHGS.131582..PA, Verizon’s ordering system (CSG) showed that the services were provided over DS1 interface because it was an FMS circuit – meaning merely that Verizon billed CenturyLink on a DS0-equivalent basis for DS1 service.⁹⁸ The system did not indicate that Circuit 11.XHGS.131582..PA was an individual DS0 channel.⁹⁹

61. Verizon denies the allegations in Paragraph 61. As just explained (at ¶ 60), Verizon properly classified the two circuits at issue. Verizon denies that its classification resulted in a “reduction in the quarterly credits owed to CenturyLink.” Both circuits were billed as DS1 revenue, and Verizon included the amounts CenturyLink paid for both circuits as “Billed DS1 Service Revenue” on which it gave CenturyLink a flat-rate discount via the quarterly Billing Credits.¹⁰⁰ If CenturyLink were correct, however, it would have paid the standard rate for the DS0s and would not have been entitled to *any* flat-rate discount on those standard monthly revenues that Verizon collected, because the charges would have been for a service type

⁹⁵ See Mason Decl. ¶¶ 90-92.

⁹⁶ See VZ Ex. 67 Tab “Ckt Pivot,” Cells C5, C6; *see also* 2009 Service Agreement, Ex. B § 5(a)(i) (listing XDH1X as a “DS1 Qualifying Service[]”).

⁹⁷ Compare VZ Ex. 67 Tab “DS1 Review,” Cells G6, G19 (identifying TNT8X as the channel-termination USOC), *with* 2009 Service Agreement, Ex. B § 5(a)(i) (listing TNT8X as being associated with “DS1 Qualifying Service[]”).

⁹⁸ See VZ Ex. 67 Tab “DS1 Review,” Cells E20-E25 (showing FMS revenue).

⁹⁹ See Mason Decl. ¶ 92.

¹⁰⁰ 2014 Service Agreement, Ex. B § 2(j); *see* 2009 Service Agreement, Ex. B § 2 (similar); *see also* Mason Decl. ¶ 91 & VZ Ex. 67 Tab “DS1 Review” (showing DS1 revenue associated with both circuit IDs).

(DS0) not subject to the Price Flex Deal in the first place.¹⁰¹ Accordingly, under CenturyLink’s theory, its Billing Credits should have been lower.

62. Verizon denies the allegations in Paragraph 62. Verizon properly classified Circuit 11.XHGS.129187..PA as a DS1 “unit.”¹⁰²

63. Verizon denies the allegations in Paragraph 63. Verizon’s response to CenturyLink’s so-called “detailed accounting” of this dispute category is set forth in Exhibit 67.

[6. Failing to Optimize FMS for CenturyLink]

64. Verizon denies the allegations in Paragraph 64. Verizon distributed CenturyLink-dedicated circuits over its special-access network in a permissible manner under FMS.¹⁰³

65. Verizon admits that, under FMS, Verizon retained the prerogative to deploy special-access circuits “to maximize network efficiencies and to optimize economic efficiencies.”¹⁰⁴ That was true because, under FMS, customers paid for only the portions of DS1 and DS3 circuits that they actually used and therefore were unaffected by how Verizon arranged the circuits across its network. Verizon admits that, once CenturyLink converted off FMS, Verizon began charging CenturyLink for full DS3 and DS1 circuits rather than the utilized portions of those circuits. Verizon denies that this arrangement violated the FMS tariff or that “the conversion of FMS in July 2014 resulted in substantial overbillings to CenturyLink for capacity that Verizon provisioned that CenturyLink did not need.” Verizon had no duty under FMS to optimize its special-access network to CenturyLink’s advantage: FMS’s purpose was to

¹⁰¹ See 2009 Service Agreement, Ex. B § 2 (defining “Billed Qualifying Service Revenue” as not including DS0 service); 2014 Service Agreement, Ex. B § 2(m) (similar).

¹⁰² See Mason Decl. ¶ 92.

¹⁰³ See Verizon’s Legal Analysis at 60-64.

¹⁰⁴ CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(A); CTL Ex. 25, Verizon FCC Tariff No. 11 § 7.2.16(A).

enable Verizon to engineer and design its network in light of its own needs and assessment of network and economic efficiencies.¹⁰⁵ CenturyLink’s bills were affected by those network decisions only *after* it converted off FMS.¹⁰⁶ And Verizon provided CenturyLink with many years of notice regarding that transition. CenturyLink has known since 2008 that its FMS plan (and, with it, Verizon’s network-optimization role) was expiring and that it was incumbent on CenturyLink to rearrange its own network to facilitate the transition.¹⁰⁷

66. Verizon admits that, under FMS, CenturyLink did not generally determine how to assign DS0s and DS1s it ordered to particular Verizon DS3s. Verizon further admits that, under FMS, Verizon determined how to distribute CenturyLink’s DS0 and DS1 circuits throughout Verizon’s network. Verizon denies that this occurred without consultations between the parties; in fact, there were regular communications between Verizon and CenturyLink about the FMS conversion.¹⁰⁸ Further, CenturyLink had access to how Verizon provisioned FMS circuits for CenturyLink at all times.¹⁰⁹ Under FMS, Verizon calibrated those circuits to optimize circuit-deployment efficiency, but it did so from Verizon’s perspective rather than CenturyLink’s.¹¹⁰

67. Verizon denies the allegations in Paragraph 67. Verizon had no duty at any point “to reduce the total number of DS3s used.” Verizon did not know what plans CenturyLink might have for a currently empty circuit, and therefore Verizon could not simply disconnect DS3 CLF facilities.¹¹¹ And after CenturyLink converted off FMS and began paying full price for

¹⁰⁵ See Declaration of Susan Fox and Marian Howell ¶¶ 4-6 (“Fox-Howell Decl.”).

¹⁰⁶ See *id.* ¶ 3 (explaining that Verizon billed on a DS0-equivalent basis under FMS).

¹⁰⁷ See *FMS Public Notice*, 23 FCC Rcd at 18108-09; CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2(a)-(c).

¹⁰⁸ See Fox-Howell Decl. ¶ 7.

¹⁰⁹ See *id.*

¹¹⁰ See *id.* ¶¶ 4-6.

¹¹¹ See *id.* ¶¶ 7-8.

underutilized DS3s, CenturyLink – not Verizon – bore responsibility for arranging its own network.¹¹² CenturyLink now admits that it could have done so: as CenturyLink’s billing consultant concedes, by November 2015 CenturyLink was “able to optimize [its own] network and remove the excess capacity facilities” that had been deployed under FMS.¹¹³ CenturyLink identifies no persuasive reason that it failed to do so prior to incurring charges that it now disputes, in light of the many years of notice Verizon provided regarding the FMS transition.¹¹⁴ Verizon also admits that the circuits in Table 8 are located in Washington, D.C., but it denies that Verizon improperly converted them.

68. Verizon denies the allegations in Paragraph 68. As stated above, Verizon had no duty to optimize circuit routing for CenturyLink’s benefit under FMS; instead, Verizon retained the prerogative to configure the network for its own benefit. Any alleged problems with CenturyLink’s post-transition network design was CenturyLink’s own responsibility.

69. Verizon denies the allegations in Paragraph 69. As stated above, Verizon denies that it overcharged for any of the circuits CenturyLink identifies in this dispute category. In addition, Verizon denies that CenturyLink’s so-called “detailed accounting” of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** represents any error affecting the Billing Credits. There is no dispute that Verizon properly classified each of the affected DS3 circuits as “units” for purposes of the Billing Credits, and CenturyLink does not allege otherwise.¹¹⁵ Indeed, the 2014 Service Agreement contains no requirement that a DS3 “unit” be

¹¹² See Verizon’s Legal Analysis at 63-64.

¹¹³ Brown Decl. ¶ 128.

¹¹⁴ See *FMS Public Notice*, 23 FCC Rcd at 18108-09.

¹¹⁵ See Compl. ¶¶ 64-69 (lacking any allegations that the affected DS3 circuits were not “units” under the 2014 Service Agreement); 2014 Service Agreement, Ex. B § 2(f) (defining “Billed DS3 CLF Unit” as “a DS3 CLF Unit for which Verizon billed Qualifying Monthly Recurring Charges”), *id.* § 2(g) (similar definition for “Billed DS3 CLS Unit”).

optimized or otherwise comply with any alleged duty under the legacy FMS tariff.¹¹⁶ Instead, CenturyLink’s real dispute in this category is with Verizon’s monthly charges – it appears to allege that Verizon should never have billed for the underutilized circuits in the first place. But CenturyLink did not properly dispute those monthly charges in a timely fashion.¹¹⁷ CenturyLink’s attempt to shoehorn a series of monthly billing disputes into a claim about the Billing Credits is improper.

[7. CenturyLink’s Attempts to Obtain Amounts Due Under the Tariffs]

70. Verizon admits that Table 9 accurately summarizes certain information about various “claims” that CenturyLink submitted through Verizon’s electronic dispute-submission system, except that Verizon denies that it has any record of receiving dispute CLINKFAC0396TU1 for **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.¹¹⁸ Verizon also denies that Verizon’s Batch ID for CLINKFAC0797B is unavailable; the Batch ID is 40970784. A more complete table, with additional pertinent information about all of those claims, is attached as Exhibit 2.¹¹⁹ Verizon lacks information or knowledge sufficient to form a belief as to when “CenturyLink became aware” of the alleged billing errors raised in its Complaint.

¹¹⁶ See 2014 Service Agreement, Ex. B § 6 (defining “Qualifying Monthly Recurring Charges” – which is keyed to the definition of “Units” – as MRCs “billed to Customer with respect to a particular service for a particular time frame”).

¹¹⁷ See Szol Decl. ¶¶ 56-57; Mason Decl. ¶ 95; *see also* 2014 Service Agreement, Ex. B § 6(e) (excluding from definition of MRC “[a]ny other billed amount for which payment is being withheld or under dispute by the Customer”); *id.* § 8(a) (“Verizon shall not include in the calculation of the Billing Credits any amounts which are unpaid and/or disputed by Customer as of the thirtieth (30th) day following the end of each Quarter.”).

¹¹⁸ See Szol Decl. ¶ 55.

¹¹⁹ VZ Ex. 2 (“Dispute History Chart”).

71. Verizon admits that it has rejected the CenturyLink disputes listed in Table 9 of its Complaint. Verizon has not yet formally closed claims CLINKFAC0765B, CLINKFAC0766B, CLINKFAC0797B, CLINKFAC0391TU1, CLINKFAC0396BTU1, CLINKFAC0416TU1, CLINKFAC0416BTU1, CLINKFAC0417TU1, CLINKFAC0418TU1, and portions of CLINKFAC0391BTU1. CenturyLink filed these claims after February 2016, when Verizon and CenturyLink were engaged in formal dispute-resolution proceedings and settlement negotiations.¹²⁰ However, Verizon considers all of these claims denied and invalid at this point. Pursuant to the procedure set forth in the 2014 Service Agreement, CenturyLink agreed with Verizon’s PY3 credit calculations on February 16, 2018, thereby abandoning claims CLINKFAC0765B, CLINKFAC0766B, and CLINKFAC0797B.¹²¹

For claims CLINKFAC0391TU1, CLINKFAC0396BTU1, CLINKFAC0416TU1, CLINKFAC0416BTU1, CLINKFAC0417TU1, CLINKFAC0418TU1, and CLINKFAC0391BTU1, which are in Dispute Category #6, CenturyLink is actually disputing Verizon’s monthly charges.¹²² All of these claims are untimely because they were filed after the 30-day deadline for CenturyLink to dispute Verizon’s monthly charges¹²³ and/or because CenturyLink failed to properly label them when submitting them.¹²⁴ Verizon denies that it rejected CenturyLink’s disputes based on information CenturyLink did not make available until months after the disputes were allegedly required to be submitted.¹²⁵ The formal disputes were

¹²⁰ See *id.*; Szol Decl. ¶¶ 48-51, 59.

¹²¹ See Szol Decl. ¶¶ 48-51.

¹²² See *supra* ¶¶ 64-69.

¹²³ See 2014 Service Agreement, Ex. B § 8(c).

¹²⁴ See Szol Decl. ¶ 58 & Tbl. 1; 2014 Service Agreement, Ex. B § 8(e) (“Any amounts or Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”).

¹²⁵ See Szol Decl. ¶ 13.

auto-resolved by Verizon’s Receivables Management System (“RMS”) because CenturyLink did not include appropriate circuit IDs in the dispute submissions.¹²⁶ CenturyLink had the circuit IDs associated with the charges underlying the Billing Credits with more than enough time to submit timely disputes.¹²⁷ Verizon specifically denies that CenturyLink was required to list the date of payment for the Billing Credits in order to file such disputes.¹²⁸

72. Verizon admits that it calculated the Billing Credits under the Price Flex Deal on a quarterly basis. Verizon further admits that it sent monthly invoices and Monthly Tracking Reports to CenturyLink. Verizon denies the allegation that the monthly reports did “not contain specific or complete circuit level details”; on several occasions (such as PY1Q1), Verizon sent circuit-level details with a monthly report.¹²⁹ Verizon further denies that the monthly invoices and reports were insufficient for “CenturyLink to become aware of an issue with Verizon’s credit calculations.” CenturyLink received two different monthly documents that together were sufficient to alert it to any errors: the monthly invoices (which provided circuit-level detail about every circuit Verizon was billing) and the Monthly Tracking Reports (disclosing Verizon’s own “unit” count). The invoices provided CenturyLink with everything it needed to perform its own circuit count – tallying up how many “units” it thought Verizon should have been counting – while the Monthly Tracking Reports disclosed Verizon’s own count of those same circuits.¹³⁰ CenturyLink readily could have compared those two numbers after any month and discovered any discrepancies.

¹²⁶ See *id.* ¶¶ 16, 19-20, 22, 24, 37, 39-45.

¹²⁷ See *id.* ¶¶ 9-13.

¹²⁸ See *id.* ¶ 13.

¹²⁹ See Mason Decl. ¶ 12 (describing PY1Q1); Credit History Chart (listing examples).

¹³⁰ See Mason Decl. ¶¶ 11-12, 25-26.

73. Verizon denies the allegations in Paragraph 73. CenturyLink’s allegations about the dispute process rest on a fundamental misunderstanding of the Service Agreements. Under those Agreements, the Billing Credits were “not subject to dispute” once paid.¹³¹ CenturyLink was free to raise disagreements concerning Verizon’s circuit count or credit calculations at any point prior to the issuance of the credit, and Verizon had to obtain CenturyLink’s full concurrence each quarter before Verizon could pay the credit.¹³² But once CenturyLink concurred and received a credit, it was precluded from disputing that credit after the fact. Thus, Verizon rejected CenturyLink’s disputes not because they came more than 30 days after the quarter ended, but because they attempted to dispute a calculation that the Service Agreements specifically made “not subject to dispute.”¹³³ Similarly, the so-called “Catch-22” CenturyLink alleges was not a function of any Verizon misconduct; it was a function of CenturyLink’s apparent inability to fill out Verizon’s claim forms properly.¹³⁴ It could have successfully submitted – and did on some occasions successfully submit – disputes without the information it now says was necessary.¹³⁵

When Verizon reminded CenturyLink that “disputes” were due to “Verizon no later than the thirtieth day following the end of the quarter” under the Service Agreements,¹³⁶ it was not talking about disputes attacking the Billing Credit calculations; it was talking about business-as-usual disputes of Verizon’s monthly charges for the underlying services covered by the Billing

¹³¹ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

¹³² *See* Mason Decl. ¶¶ 9-23; Szol Decl. ¶¶ 9-10.

¹³³ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f); *see* Szol Decl. ¶¶ 29-35 (describing Verizon’s rejection of Verizon’s improper dispute submissions).

¹³⁴ *See* Szol Decl. ¶¶ 10-13.

¹³⁵ *See id.* ¶¶ 12-13.

¹³⁶ CTL Ex. 46.04, at 2.

Credits.¹³⁷ Such business-as-usual disputes were due within 30 days of each quarter's end because the parties agreed to exclude disputed monthly charges from the credit calculations – and the 30-day deadline afforded the parties time to revise the credit calculations in light of the open disputes.¹³⁸ CenturyLink's discussion of the information it received within 30 days is therefore irrelevant. Regardless, CenturyLink also received information – in the form of monthly invoices and Monthly Tracking Reports – that provided it with all of the information it needed to raise disputes concerning Billing Credits within 30 days of each quarter's end.¹³⁹

74. Verizon approved the PY2Q4 credit for payment in RMS on June 4, 2016.¹⁴⁰ Verizon admits that it provided CenturyLink with quarterly reports with circuit-level detail on April 26, 2016, and that the data in those reports were sufficient for CenturyLink to calculate its dispute for DS3s and DS1s without mileage.¹⁴¹ Verizon denies CenturyLink's characterization of the 30-day dispute deadline; as stated above (at ¶ 73), that deadline was for business-as-usual monthly-charge disputes rather than for credit-calculation disputes.

75. Verizon denies the allegations in Paragraph 75. CenturyLink had enough information to discover the alleged errors in Verizon's PY2Q4 credit calculations well before April 26, 2016. First, Verizon sent Monthly Tracking Reports with summary-level information on January 22, February 22, and April 8, 2016.¹⁴² That summary-level information showed

¹³⁷ See Mason Decl. ¶ 42 & n.78 (author of the email explaining that her reference to the 30-day deadline was geared off of § 8(c) of Exhibit B to the 2014 Service Agreement, which Verizon understood to apply only to business-as-usual monthly disputes); Szol Decl. ¶ 9.

¹³⁸ See 2009 Service Agreement, Ex. B § 7(e)(ii); 2014 Service Agreement, Ex. B § 8(c); see Mason Decl. ¶¶ 9-23 (explaining mechanics of dispute-concurrence process).

¹³⁹ See Mason Decl. ¶¶ 24-26.

¹⁴⁰ See Credit History Chart at PY2Q4.

¹⁴¹ See CTL Ex. 48.02.

¹⁴² See Credit History Chart at PY2Q4.

Verizon’s count of units and Billing Credit amounts attributable to each month.¹⁴³ Those Monthly Tracking Reports, combined with Verizon’s invoices that were sent separately each month, allowed CenturyLink to calculate the discrepancy between the parties’ respective unit counts.¹⁴⁴ Second, by April 2016, CenturyLink had long been attempting to raise disputes (albeit improperly) concerning alleged credit-calculation errors that, by its own account, recurred quarter-after-quarter in substantially similar form.¹⁴⁵ It was therefore already on notice of the alleged errors long before it received Verizon’s circuit-level detail file for PY2Q4. Indeed, CenturyLink could have asked Verizon for and received circuit-level detail at any time, including in connection with any Monthly Tracking Report, as it did in PY1Q1.¹⁴⁶

76. Verizon denies the allegations in Paragraph 76. As just explained, CenturyLink had all of the information it needed to dispute Verizon’s credit calculations in a timely fashion. Further, CenturyLink bears responsibility for the fact that Billing Credits were not always issued within 60 days of the end of each quarter.¹⁴⁷

77. Verizon denies the allegations in Paragraph 77. Both prongs of the alleged “two-fold” “Catch-22” are illusory. First, Verizon timely provided its credit calculations, and the delays in credit issuance stemmed from CenturyLink’s failure to provide concurrence (in either the open-dispute amounts or the final-credit amounts) in a timely fashion.¹⁴⁸ Second, CenturyLink experienced difficulties using Verizon’s business-as-usual dispute-submission

¹⁴³ See Mason Decl. ¶ 11(b) (noting that “unit” information was on Monthly Detail Tab).

¹⁴⁴ See *id.* ¶¶ 24-26.

¹⁴⁵ See Compl. ¶ 116 (“In many instances, CenturyLink had previously disputed the exact same circuit in the same circumstances.”) (emphasis omitted); Dispute History Chart (detailing history of CenturyLink’s Billing Credit claims dating back to June 2014).

¹⁴⁶ See Mason Decl. ¶ 27.

¹⁴⁷ See *id.* ¶¶ 52-55.

¹⁴⁸ See *id.* ¶¶ 54-55.

system because CenturyLink improperly filled out Verizon's standard claim forms.¹⁴⁹

CenturyLink had all of the information it needed to fill out those forms – in that it could have used the bill dates and circuit IDs of the underlying charges, rather than the Billing Credits themselves – but it kept inserting a BAN into the Circuit ID field, which the system rejected.¹⁵⁰ To the extent CenturyLink had disagreements with the way Verizon was calculating the Billing Credits, it had a number of avenues – including changing its description of the circuit ID or working with Verizon employees to bypass the system altogether – that it could have pursued.¹⁵¹ Indeed, the requirements of Verizon's electronic system were intended to facilitate efficient dispute processing, but its requirements were not sacrosanct. CenturyLink's claims were not ultimately denied because they failed to make it through Verizon's system; they were denied because they conflicted with the Service Agreements and contract tariffs.¹⁵²

78. Verizon denies the allegation in Paragraph 78 that full circuit-level detail was necessary for CenturyLink to analyze Verizon's credit calculations. Verizon admits that the first four columns of CenturyLink's Table 10 are accurate. Verizon also admits that the sixth column is accurate insofar as it simply measures the number of days between the fourth and fifth columns. Verizon denies that the fifth column is accurate. The dates in that column correspond to the dates that Verizon sent CenturyLink a quarterly tracking report that attached full circuit-level detail for the quarter. For many quarters, CenturyLink does not account for Verizon's earlier preliminary reports with summary-level information for the quarter.¹⁵³ For example, in

¹⁴⁹ See Szol Decl. ¶¶ 11-13.

¹⁵⁰ See *id.* ¶¶ 16, 19-20, 22, 24, 37, 39-45.

¹⁵¹ See *id.* ¶¶ 10-13.

¹⁵² See *id.* ¶ 10.

¹⁵³ See Credit History Chart (detailing preliminary quarterly report and revised credit calculations).

PY2Q1, Verizon sent a revised quarterly report with accompanying circuit-level information on July 27, 2015, but on June 23, 2015, it had already sent a preliminary quarterly report with Verizon’s circuit count and other summary information.¹⁵⁴ That earlier report was more than sufficient to alert CenturyLink to its alleged disputes.

79. Verizon admits in part and denies in part the allegations in CenturyLink’s Table 11. Verizon’s full response to that table is set forth in the attached Credit History Chart (VZ Ex. 1) and the Declaration of Patricia Mason (at ¶¶ 30-32).

80. Verizon denies the allegations in Paragraph 80 for the reasons set forth below.

**[a. First Claim Submission (December 2013 to February 2014)
(2009 Service Agreement PY5Q4) and Parties’ Course of
Conduct Before CenturyLink Filed Its Informal Complaint]**

81. Verizon admits that Claim No. CLINKFAC0168 pertains to PY5Q4 (December 2013 to February 2014) and involves an alleged dispute amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**. Verizon admits that it sent monthly invoices to CenturyLink containing circuit charges at Verizon’s standard tariffed rates for December 2013, January 2014, and February 2014. Verizon further admits that it provided CenturyLink with Monthly Tracking Reports, which contained summaries of the total “units” billed in each category, on January 20, February 17, and March 14, 2014.¹⁵⁵ Verizon denies that its invoices and Monthly Tracking Reports lacked “sufficient details that would have allowed CenturyLink to become aware of specific discrepancies in billing or issues with the service.” As explained above, Verizon’s Monthly Tracking Reports, when combined with its monthly invoices, provided such details.

¹⁵⁴ See Credit History Chart at PY2Q1.

¹⁵⁵ See Credit History Chart at PY5Q4.

82. Verizon admits that PY5Q4 ended on February 28, 2014. Verizon admits that, on March 17, 2014, it supplied DS1 and DS3 quarterly reports with circuit-level detail for PY5Q4. Verizon denies that these reports were necessary for CenturyLink to evaluate Verizon’s credit calculations. Verizon further admits that its quarterly reports did not provide individual DS1 circuit IDs. Verizon did not include DS1 circuit IDs in its quarterly reporting because, consistent with the Service Agreements, it counted DS1 “units” by channel termination rather than by circuit ID.¹⁵⁶ CenturyLink never asked Verizon for reporting including DS1 circuit-level information by circuit ID and never indicated that it believed such information was needed to substantiate the DS1 portion of the credit calculation.¹⁵⁷ Had CenturyLink asked Verizon for DS1 circuit-level information, Verizon would have readily provided it.¹⁵⁸

83. Verizon denies the allegations in Paragraph 83. CenturyLink has not proffered competent evidence that its May 9, 2014 concurrence in the PY5Q4 credit calculation reflected merely a “check of Verizon’s underlying math” rather than an “analysis of whether Verizon had properly counted units under the agreements and tariffs.” CenturyLink’s only support for that allegation is Paragraph 36 of Tiffany Brown’s Declaration.¹⁵⁹ But Ms. Brown’s Declaration lays no foundation for her having personal knowledge of CenturyLink’s May 9, 2014 concurrence – particularly given that she only began assisting CenturyLink on this issue sometime “in May 2014.”¹⁶⁰ Indeed, neither Verizon’s proposed credit calculations nor

¹⁵⁶ See Mason Decl. ¶ 17; 2009 Service Agreement, Ex. B § 2 (defining “DS1 Unit”); 2014 Service Agreement, Ex. B § 2(r) (same).

¹⁵⁷ See Mason Decl. ¶¶ 17-18.

¹⁵⁸ See *id.*

¹⁵⁹ See Compl. ¶ 83 n.116 (citing Brown Decl. ¶ 36).

¹⁶⁰ Declaration of Patrick Welch ¶ 14.

CenturyLink’s concurrence copied Ms. Brown.¹⁶¹ Further, CenturyLink’s “checking the math” allegation conflicts with correspondence in which CenturyLink informed Verizon – in advance of providing its concurrence – that “[w]e will be working to confirm the unit numbers.”¹⁶² Finally, Verizon denies CenturyLink’s allegation about its inability to file disputes; it could have properly submitted disputes through a number of avenues.¹⁶³

84. Verizon admits that Paragraph 84 accurately sets out the dates that the PY5Q4 Billing Credit posted to CenturyLink’s monthly invoices. Verizon admits that CenturyLink attempted to submit Claim No. CLINKFAC0168 on June 19, 2014, and emailed a copy to Verizon’s billing representatives. Verizon lacks knowledge or information sufficient to form a belief as to CenturyLink’s motivations for doing so. Verizon admits that its electronic dispute-submission system automatically rejected the claim and stated: “Auto resolved due to invalid circuit. This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.” That rejection was sent automatically by Verizon’s electronic system because CenturyLink’s submission did not comply with the system’s validation requirements.¹⁶⁴ Verizon had previously informed CenturyLink representatives of those requirements on multiple occasions.¹⁶⁵

85. Verizon admits that it participated in a call with CenturyLink on July 30, 2014, but it denies that its participation indicated a recognition that the Service Agreements provided

¹⁶¹ See, e.g., CTL Ex. 37.01-37.04.

¹⁶² CTL Ex. 37.04 (6/26/13 email from CenturyLink employee Anne Grimm responding to Verizon’s Monthly Tracking Report); see CTL Ex. 38.01 (similar 9/24/13 email informing Verizon that “[w]e will be working to confirm the unit numbers”).

¹⁶³ See Szol Decl. ¶¶ 10-13.

¹⁶⁴ See *id.* ¶ 19.

¹⁶⁵ See *id.* ¶ 15.

for flexible dispute resolution. Rather, Verizon participated in a call with CenturyLink to understand more fully the nature of CenturyLink’s position. This was necessary in part because CenturyLink raised these disputes with Verizon employees who normally dealt with business-as-usual disputes and were not initially familiar with the credit-calculation process and the relevant contractual provisions.¹⁶⁶ Further, CenturyLink was a valued customer to Verizon, and Verizon wanted to understand CenturyLink’s concerns – regardless of whether CenturyLink had an actionable dispute under the governing contracts.¹⁶⁷ On August 19, 2014, Verizon requested additional documentation on CenturyLink’s claims, which followed up on a request it first made on August 1, 2014.¹⁶⁸

On August 29, 2014, Verizon denied the PY5Q1 – PY5Q3 disputes because “no additional supporting documentation has been provided to substantiate the validity of the dispute.”¹⁶⁹ When a Sage Management, Inc. (“Sage”) ¹⁷⁰ representative, Tiffany Brown, sent the information Verizon had requested six days later, Verizon stated it would continue investigating CenturyLink’s assertions.¹⁷¹ Verizon then sent CenturyLink its “final response to the CSP issue” on September 15, 2014. In that response, Verizon explained that it was properly billing the DS3 CLF units under the Agreements and tariffs in the same manner it had throughout the plan. And it explained that CenturyLink had “agreed to the credit” after Verizon “provided

¹⁶⁶ *See id.* ¶ 26.

¹⁶⁷ *See id.* ¶¶ 26-35.

¹⁶⁸ *See id.* ¶ 28; CTL Ex. 40.03, at 3-4.

¹⁶⁹ *See Szol Decl.* ¶ 28.

¹⁷⁰ Sage Management, Inc. is a technology and audit firm that identifies and resolves overbillings from telecommunication vendors on behalf of clients. Its motto is “We Find Money on Telecom Bills™.” CenturyLink hired Synchronoss Technologies, Inc. to provide various services, and Synchronoss subcontracted with Sage. *See Brown Decl.* ¶ 1; Sage Management, Inc., at <http://www.sagemi.com> (last visited Apr. 5, 2018).

¹⁷¹ *See Szol Decl.* ¶ 29.

all supporting documentation.”¹⁷² At that point, Verizon considered all of these disputes closed.¹⁷³

86. Verizon admits that Patrick Lowell of Sage objected to Verizon’s denial of the disputes on September 26, 2014, and submitted further information on behalf of CenturyLink. Verizon reviewed this information and sought clarification on points it did not understand in a good-faith effort to understand the position of a valued client.¹⁷⁴ Verizon admits that Tiffany Brown provided more information on October 3, 2014. None of this information changed Verizon’s final position from September 15, 2014. After Patrick Lowell contacted Verizon again, Joe Aguilar, a Verizon consultant, agreed to set up a meeting between CenturyLink and Product Managers at Verizon after the upcoming holiday season. Again, Verizon considered the disputes closed because the credits were not subject to dispute after concurrence, but Verizon was willing to continue explaining its rationale and discussing CenturyLink’s concerns.¹⁷⁵

87. Verizon admits that it continued to review information submitted by CenturyLink in early 2015, but it never agreed to waive the procedural bar to CenturyLink’s claims. The allegations in Paragraph 87 omit that Mr. Aguilar had a call with a Sage representative and a CenturyLink employee on March 12, 2015. On that call, Mr. Aguilar again explained that, under both the 2009 and the 2014 Service Agreements, the Billing Credits were not subject to dispute after CenturyLink had concurred in the amounts and that CenturyLink had always concurred in the quarterly Billing Credit calculations prior to issuance.¹⁷⁶ At this point, Verizon perceived

¹⁷² *See id.*

¹⁷³ *See id.*

¹⁷⁴ *See id.* ¶ 30.

¹⁷⁵ *See id.* ¶ 31.

¹⁷⁶ *See* VZ Ex. 40 (3/12/15 email from J. Aguilar quoting 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f)).

that the driving force behind the disputes was the outside consultant Sage rather than CenturyLink itself. Very little of the communication about this dispute came from CenturyLink directly, and, in late February 2015, Verizon learned that the CenturyLink employee who reviewed and concurred with Verizon’s quarterly credit calculations was not even aware of the dispute.¹⁷⁷ The same CenturyLink employee received and reviewed Verizon’s Monthly Tracking Reports and never raised any issues with respect to Verizon’s unit counts or credit calculations on a monthly basis.¹⁷⁸ Mr. Aguilar continued to email with CenturyLink and Sage representatives, reiterating that Verizon’s position remained unchanged, while also stating that he would speak to his managers.¹⁷⁹ In May 2015, CenturyLink indicated that it was escalating the conflict.¹⁸⁰

In September of that year, CenturyLink employees communicated directly with a Senior Manager at Verizon, David Szol, and offered to resolve the dispute directly with Verizon instead of using intermediate Sage representatives. Verizon participated in a call with these CenturyLink employees, but again reiterated its position that CenturyLink had concurred in all of the quarterly Billing Credits and therefore could not properly dispute the credits.¹⁸¹

88. Verizon admits that CenturyLink sent a March 21, 2016 letter requesting contractual dispute resolution covering its purported claims about Verizon’s Billing Credit calculations. Verizon admits that it responded with a May 31, 2016 letter addressing

¹⁷⁷ See VZ Ex. 41 (2/20/15 email string ending from S. Kennedy describing call with Ms. Grimm in which “she was not aware of this dispute”).

¹⁷⁸ See Mason Decl. ¶¶ 27, 42.

¹⁷⁹ See CTL Ex. 40.05.

¹⁸⁰ See *id.*

¹⁸¹ See VZ Ex. 43 (10/2/15 email from J. Aguilar describing conference calls).

CenturyLink’s assertions.¹⁸² That letter, which Verizon sent the day before Verizon employees returned to work after a prolonged strike, explained that the 2009 and 2014 Service Agreements barred CenturyLink from raising after-the-fact disputes regarding the Billing Credits that CenturyLink had already received.¹⁸³ Verizon then explained again why it had denied CenturyLink’s claims on the merits, noting that the disputed Billing Credits “were calculated in accordance with the terms of the parties’ Service Agreements (as applicable) and associated Contract Tariffs.”¹⁸⁴ As for the claim that Verizon breached a network-optimization duty, Verizon observed that it “was not obligated to recalibrate the subject circuits” to CenturyLink’s advantage.¹⁸⁵ CenturyLink filed its Informal Complaint on June 17, 2016, and Verizon responded on August 3, 2016. Verizon denies the remaining allegations in Paragraph 88.

[b. Claim Submission for Credits Due for Services from June 2015 to August 2015 (2014 Service Agreement PY2Q2)]

89. Verizon admits that CenturyLink Claim No. CLINKFAC0421 pertains to PY2Q2 of the 2014 Service Agreement (June 2015 to August 2015). Verizon admits that it sent monthly invoices to CenturyLink containing circuit charges at Verizon’s standard tariffed rates for June, July, and August 2015. Verizon further admits that it provided CenturyLink with Monthly Tracking Reports, which contained summaries of the total units billed in each category, on July 28, August 25, and September 21, 2015.¹⁸⁶ Verizon denies that its invoices and Monthly Tracking Reports lacked sufficient “details that would have allowed CenturyLink to become

¹⁸² See Szol Letter.

¹⁸³ *Id.* at 2-3.

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.* at 3-4.

¹⁸⁶ See Credit History Chart at PY2Q2.

aware of any issues with their service or discrepancies in billing.” As explained above, Verizon’s monthly reporting provided such details.

90. Verizon admits that PY2Q2 ended on August 31, 2015. Verizon admits that, on October 5, 2015, it supplied DS1 and DS3 quarterly reports with circuit-level detail for PY2Q2. Verizon denies that these reports were necessary for CenturyLink to evaluate Verizon’s credit calculations. Verizon further admits that its quarterly reports did not provide individual circuit IDs for DS1s with mileage. Verizon did not include those circuit IDs in its quarterly reporting because, consistent with the Service Agreements, it counted DS1 “units” by channel termination rather than by circuit ID.¹⁸⁷ Nonetheless, CenturyLink had all of the information it needed to determine any alleged credit discrepancies. In addition, had CenturyLink asked Verizon for reporting including DS1 circuit-level information by circuit ID, Verizon would have readily provided it.¹⁸⁸ Verizon also denies that its position was that CenturyLink had to dispute the Billing Credits within 30 days of the quarter ending; the 30-day deadline applied to business-as-usual disputes concerning the underlying monthly charges – not to disputes about the way Verizon calculated the Billing Credits themselves.¹⁸⁹

91. Verizon denies the allegations in Paragraph 91. CenturyLink could have worked with Verizon’s dispute team to properly fill out the claim form to submit a dispute in RMS.¹⁹⁰ But, had it done so, CenturyLink’s claims would have remained denied because the Service Agreements barred its disputes and because CenturyLink failed to substantiate any actual

¹⁸⁷ See Mason Decl. ¶ 17; 2009 Service Agreement, Ex. B § 2 (defining “DS1 Unit”); 2014 Service Agreement, Ex. B § 2(r) (same).

¹⁸⁸ See Mason Decl. ¶¶ 17-18.

¹⁸⁹ See Verizon’s Legal Analysis at 33-35.

¹⁹⁰ See Szol Decl. ¶¶ 10-13.

overcharges.¹⁹¹ Further, CenturyLink abandoned its claim fewer than three weeks later when it fully concurred in the credit despite the language in the Service Agreements and Verizon's warning that agreeing to the credit amounts would render them no longer subject to dispute.¹⁹²

92. Verizon admits that, on October 29, 2015, CenturyLink filed Claim No. CLINKFAC0421 through Verizon's electronic dispute-submission system. Verizon admits that CenturyLink attempted to use the largest BAN and corresponding date associated with the underlying monthly charges for the services subject to the Price Flex Deal.¹⁹³ Verizon lacks knowledge or information sufficient to form a belief as to the truth of CenturyLink's characterizations of its state of mind while making these submissions.

93. Verizon admits that it denied Claim No. CLINKFAC0421 on October 29, 2015, with the message: "This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid."¹⁹⁴ The system rejected CenturyLink's submission because it improperly listed a BAN in the Circuit ID field.¹⁹⁵ Because CenturyLink had not yet concurred and Verizon had not issued the credit, Verizon considered CenturyLink's dispute when it submitted the dispute to Verizon via email on October 19, 2015.¹⁹⁶ But, as discussed below, CenturyLink abandoned its disputes when it concurred fully in the credit on November 17, 2015.¹⁹⁷ Verizon reiterated that, once it had issued the credit, the credit would no longer be subject to dispute.¹⁹⁸ When CenturyLink did not respond,

¹⁹¹ See Szol Letter at 2-4.

¹⁹² See Mason Decl. ¶¶ 43-44; CTL Ex. 46.04.

¹⁹³ See Szol Decl. ¶ 43.

¹⁹⁴ CTL Ex. 46.08.

¹⁹⁵ See Szol Decl. ¶ 43.

¹⁹⁶ See CTL Ex. 46.04, at 3.

¹⁹⁷ See *id.* at 1-2.

¹⁹⁸ See *id.* at 1.

Verizon issued the credit on December 17, 2015. At this point, Verizon considered CenturyLink’s claim abandoned. Verizon denies that CenturyLink did not have the necessary information until the credits posted on the invoices on December 19, 20, and 25, 2015, and January 10, 2016. Verizon admits that CenturyLink did not refile claim CLINKFAC0421.

[c. Verizon Withheld Undisputed Credits after Receiving CenturyLink’s Disputes]

94. Verizon denies the allegations in Paragraph 94. Beginning in PY2Q2, CenturyLink’s initial response to Verizon’s final credit calculations stopped short of full concurrence: CenturyLink began asking for immediate payment of the amount that Verizon had calculated – which, in CenturyLink’s view, represented only part of the Billing Credit owed – while reserving the right to file disputes later asking for additional amounts. Verizon rejected such requests because they were inconsistent with the Service Agreements: both Agreements contemplated the payment of a single Billing Credit per quarter, and such credits were “not subject to dispute.”¹⁹⁹ Verizon’s refusal to pay CenturyLink the partial credits it requested was not “coercive”; instead, it reflected Verizon’s belief that partial credit payment was unworkable and inconsistent with the parties’ agreed-upon credit-payment framework.²⁰⁰ Thus, in refusing to pay the credit until CenturyLink had concurred, Verizon was merely following the terms of the Service Agreement – namely, that it could not pay the credit until “the applicable credit amount is agreed to by Customer.”²⁰¹

95. Verizon admits that CenturyLink’s initial response to Verizon’s proposed credit calculation for PY2Q2 was to “agree[]” that Verizon owed the amount it had proposed while also

¹⁹⁹ 2014 Service Agreement, Ex. B § 8(f).

²⁰⁰ See Mason Decl. ¶¶ 48-51.

²⁰¹ 2014 Service Agreement, Ex. B § 8(f); see Mason Decl. ¶ 49.

asking for an additional **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** due to three alleged “errors” in Verizon’s calculations.²⁰² Verizon did not consider this response to be a full concurrence as required for Verizon to issue the credit.²⁰³ Verizon also admits that CenturyLink unsuccessfully attempted to dispute that credit amount through Verizon’s system. Verizon denies that CenturyLink’s response accurately identified “three errors” warranting an additional credit payment.

96. Verizon admits that, on November 13, 2015, it responded to CenturyLink’s PY2Q2 non-concurrence by explaining that it had “not issued the credit pending Centurylink’s agreement as to the credit amount” and that “we need to review and resolve the disputes prior to issuing the credit and/or the final credit amount needs to be agreed to by Centurylink.”²⁰⁴ CenturyLink responded that, “[i]n light of Verizon’s refusal,” CenturyLink would “agree[] to Verizon issuing a credit in the amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**” – *i.e.*, the amount that Verizon originally proposed.²⁰⁵ Verizon then responded that it would “accept CenturyLink’s agreement as to the credit amount and will issue a credit” equaling the agreed-upon amount.²⁰⁶ In doing so, Verizon “reiterate[d]” that, “following application of the credit and pursuant to the agreement, any amounts or services included in the calculation of the credit may not be disputed in the future.”²⁰⁷ CenturyLink did not respond further, and Verizon promptly issued the credit.²⁰⁸

²⁰² CTL Ex. 46.04, at 2.

²⁰³ See Mason Decl. ¶¶ 48-49; see 2014 Service Agreement, Ex. B § 8(f) (“Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer.”).

²⁰⁴ CTL Ex. 46.04, at 2.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 1.

²⁰⁷ *Id.*

²⁰⁸ See Mason Decl. ¶ 43; Credit History Chart at PY2Q2.

97. Verizon denies the allegations in Paragraph 97. Verizon denies that CenturyLink ever properly distinguished between “undisputed credits” and “disputed amounts.”²⁰⁹ Based on the parties’ previous communications in PY2Q2, Verizon remitted the PY2Q3 – PY2Q4 credits in the amounts it had proposed because it interpreted CenturyLink’s responses as a full concurrence in accordance with the Service Agreements. As Ms. Mason explained before paying the PY2Q4 credit, Verizon “accept[ed]” CenturyLink’s response as “agreement as to the credit amounts” and, therefore, once Verizon had paid the credits, the “PY2Q4 Credit is not subject to dispute.”²¹⁰ CenturyLink responded with an unrelated question but accepted the credit.²¹¹

98. Verizon admits that, for Plan Year 3, it withheld payment of the Billing Credits until it obtained CenturyLink’s concurrence in the credit amounts.²¹² Verizon denies CenturyLink’s characterization of withholding payment as a “strong arm tactic[.]” As stated above, CenturyLink’s attempt to bifurcate the quarterly credits into “disputed” and “undisputed” amounts was unworkable and inconsistent with the Service Agreements. Verizon declined to pay the credits “until the applicable credit amount [wa]s agreed to by [CenturyLink].”²¹³ In addition, Verizon admits that the first seven columns of CenturyLink’s Table 12 accurately quantify the two parties’ credit calculations and the percentage variance between them. Verizon denies that the third-from-the-right column – entitled “Date of CenturyLink Concurrence” – is accurate. CenturyLink did not “concur” in the credit amounts on the dates listed in that column;

²⁰⁹ See Mason Decl. ¶¶ 48-51.

²¹⁰ VZ Ex. 69; see Mason Decl. ¶ 44.

²¹¹ See Mason Decl. ¶ 44.

²¹² See *id.* ¶¶ 45-47.

²¹³ 2014 Service Agreement, Ex. B § 8(f).

it instead disputed Verizon’s credit amount as being too low..²¹⁴ CenturyLink did not finally concur in the PY3 credit amount until February 16, 2018, when it wrote that it “hereby concurs with Verizon’s credit calculation for PY3 and asks that Verizon immediately release **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.”²¹⁵ After Verizon then wrote to CenturyLink making clear the exact credit amount that it planned to issue, CenturyLink responded that Verizon’s proposed amount “is consistent with what we expect Verizon to issue.”²¹⁶ Verizon then promptly issued the credit for PY3Q1 – PY3Q4 on February 16, 2018..²¹⁷ Verizon otherwise denies the allegations in Paragraph 98.

99. Verizon admits that, on January 23, 2018, CenturyLink sent Verizon an email concurring in the Plan Year 3 credit amount. Verizon denies that it had not paid the credit as of the date of the Formal Complaint. In fact, Verizon paid the Plan Year 3 credit on February 16, 2018, and confirmed its payment in an email to CenturyLink on February 22, 2018,²¹⁸ which followed several additional emails in which Verizon confirmed CenturyLink’s concurrence..²¹⁹ Verizon denies that it has held “hostage” any “undisputed credits.” As explained above, Verizon properly waited to issue the credit until CenturyLink concurred in the full credit amount. Verizon further denies CenturyLink’s suggestion that it is entitled to additional amounts at the

²¹⁴ See Mason Decl. ¶¶ 48-49; CTL Ex. 49.22 **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]]

²¹⁵ CTL Ex. 52.12, at 1.

²¹⁶ CTL Ex. 52.15, at 1.

²¹⁷ See VZ Ex. 71, at 1-2.

²¹⁸ See VZ Ex. 71.

²¹⁹ See Mason Decl. ¶¶ 45-47.

“tariff interest rates.” As the parties agreed, “[t]he amount of the Billing Credits shall in no event be subject to any late payment, interest or penalty as set forth in Section 2 of the Tariffs.”²²⁰

[II. DISCUSSION]

100. Paragraph 100 states legal conclusions to which no response is required.

101. Verizon denies the allegations in Paragraph 101. As previously explained, Verizon’s practices were consistent with the Service Agreements and contract tariffs.

102. Paragraph 102 states legal conclusions to which no response is required. Verizon denies that its alleged conduct relating to the dispute process was unjust and unreasonable or otherwise violated the Act.²²¹ The filed-rate doctrine requires enforcement of all of the contract tariffs’ terms²²² – including the provisions requiring CenturyLink to concur in the Billing Credit before it is issued and barring CenturyLink from disputing the Billing Credits.²²³

[A. Verizon Violated the Contract Tariffs and Overcharged CenturyLink]

103. Paragraph 103 states legal conclusions to which no response is required. As explained in Verizon’s Legal Analysis (at 45-47), the filed-rate doctrine does not support CenturyLink’s claims. Nor are CenturyLink’s claims for an “overcharge” subject to 47 U.S.C. § 415(c). Instead, CenturyLink’s claims seek “damages” under 47 U.S.C. § 415(b).²²⁴

²²⁰ 2014 Service Agreement, Ex. B § 8(g).

²²¹ See Verizon’s Legal Analysis at 49-65.

²²² See Order, *Richman Bros. Records, Inc. v. U.S. Sprint Commc’ns Co.*, 10 FCC Rcd 13639, ¶ 12 (1995) (noting that the filed-rate doctrine requires enforcement of “all tariff provisions, not just . . . those pertaining to rates”).

²²³ See 2009 Service Agreement, Ex. B § 7(e)(vi); 2014 Service Agreement, Ex. B § 8(f); see also Verizon’s Legal Analysis at 37-41 (explaining that these provisions should be enforced).

²²⁴ See Verizon’s Legal Analysis at 66-68.

104. Verizon denies the allegations in Paragraph 104. Verizon agreed to provide CenturyLink with discounts and Billing Credits in exchange for valuable consideration from CenturyLink, including revenue commitments and an agreement that the Billing Credits were “not subject to dispute.”²²⁵ The parties did not view the Billing Credits in isolation from those other provisions.²²⁶

105. Verizon denies the allegations in Paragraph 105.

[B. Verizon’s Billing and Credit Practices Are Unjust and Unreasonable]

106. Paragraph 106 states a legal conclusion to which no response is required.

107. The allegations in Paragraph 107 that Verizon engaged in certain “unjust and unreasonable practices” state legal conclusions to which no response is required. Verizon denies the allegation in Paragraph 107 that “CenturyLink raised its disputes within a reasonable time.” Under the Service Agreements and contract tariffs, CenturyLink had no right to dispute Billing Credits once they had been paid.²²⁷ For the reasons explained below, the parties’ course of dealing did not depart from the contracts’ plain meaning.

²²⁵ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

²²⁶ See Alston Decl. ¶¶ 8-12.

²²⁷ See 2009 Service Agreement, Ex. B § 7(e)(iii) (“Any amounts or Qualifying Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”); *id.* § 7(e)(vii) (“The Billing Credits as determined by Verizon are not subject to dispute.”); 2014 Service Agreement, Ex. B § 8(e)-(f) (similar).

[1. Verizon’s Failure to Abide by the Terms of the Agreements’ Dispute Resolution Provisions Was an Unjust and Unreasonable Practice]

[a. Verizon Unreasonably Failed to Consider CenturyLink’s Overcharge Disputes Even Though They Were Brought Within a Reasonable Time Under the Agreements and the Tariffs]

108. Verizon denies the allegations in Paragraph 108. Once again, CenturyLink’s reference to a “30-day dispute limitations period” misreads the Service Agreements. The 30-day dispute requirement governed business-as-usual disputes of the underlying monthly charges subject to the Price Flex Deal; it did not govern calculation of the Billing Credits themselves. That agreed-upon requirement was reasonable and reflected the parties’ intent that CenturyLink only receive flat-rate pricing on charges it had paid and not on disputed charges that it might later recoup.²²⁸ Verizon further denies that its enforcement of the Service Agreements’ dispute provisions was “belated.”²²⁹

109. Verizon denies the allegations in Paragraph 109. As explained further in Verizon’s Legal Analysis (at 33-35), the provision concerning “disputes raised after the determination of the Billing Credits” governed business-as-usual disputes of Verizon’s underlying monthly charges but not disputes of the Billing Credits themselves.²³⁰ The provision for Verizon paying CenturyLink when it resolved a dispute in CenturyLink’s favor meant that Verizon would refund CenturyLink’s monthly charges; it did not mean that Verizon would adjust

²²⁸ See Alston Decl. ¶¶ 10-11.

²²⁹ See Mason Decl. ¶¶ 42-51.

²³⁰ 2009 Service Agreement, Ex. B § 7(e)(v) (“there shall be no adjustment to the Billing Credits”); *see id.* § 7(e)(iii) (“Any amounts or Qualifying Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”); 2014 Service Agreement, Ex. B § 8(e) (“Any amounts or Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”).

the Billing Credits. The provision for disputes when “Verizon applies a Billing Credit that does not match the mutually agreed upon credit amount”²³¹ is inapplicable because Verizon obtained CenturyLink’s full concurrence before issuing each Billing Credit.²³² Verizon further denies that CenturyLink “does not seek to disturb” the so-called “undisputed credits” Verizon calculated. CenturyLink *does* seek to disturb those credit amounts by adjusting them upward.²³³

110. Verizon denies the allegations in Paragraph 110. Although the Price Flex Deal was related to other pricing deals between the parties for non-tariffed services, the Billing Credits for tariffed DS1 and DS3 services were governed by the specific dispute provisions in the Service Agreements and contract tariffs – not the general dispute clause in the MSA.²³⁴

111. Verizon admits the allegations in Paragraph 111, except denies that the MSA’s Attachments 11 and 13 “supplemented” the Service Agreements and contract tariffs. Those Attachments governed separate, non-tariffed services.²³⁵ Although there was an interrelationship between the services – particularly with respect to CenturyLink’s overall volume commitments – the Service Agreements (and contract tariffs) alone controlled the dispute process for the Billing Credits under the Price Flex Deal.²³⁶

112. Verizon denies the allegations in Paragraph 112. The interrelationship between the Price Flex Deal and the MSA Product Schedules merely reinforced the importance of

²³¹ 2014 Service Agreement, Ex. B § 8(f).

²³² See Mason Decl. ¶¶ 30-32.

²³³ See Compl. ¶ 109 (alleging that “CenturyLink [is] due extra amounts” on top of the credit amounts that Verizon calculated).

²³⁴ Compare 2009 Service Agreement, Ex. B § 7(e), and 2014 Service Agreement, Ex. B § 8, with MSA Att. 13, § 9.2; see also Alston Decl. ¶¶ 3-7 (describing relationship between MSA and Service Agreements).

²³⁵ See Alston Decl. ¶¶ 3-4.

²³⁶ See Verizon’s Legal Analysis at 23-26.

protecting the finality of the quarterly Billing Credits. Because the Billing Credits affected Verizon's charges for services under other Product Schedules,²³⁷ Verizon needed to be able to pay each quarterly Billing Credit in a timely fashion and definitively close the books on the quarter.²³⁸ After-the-fact adjustments to the credits would have threatened consequences for other services and undermined the principle of finality at the core of the Price Flex Deal.²³⁹

113. Paragraph 113 states a legal conclusion to which no response is required. To the extent a response is required, Verizon denies the allegations in Paragraph 113. Verizon's interpretation of the various agreements is set forth in its Legal Analysis and its response to CenturyLink's Summary of Governing Agreements.

[b. Even if Verizon's Interpretation of the Agreements and Tariffs Was Reasonable, Verizon Failed to Abide by those Same Dispute Resolution Provisions and Cannot Now Rely on Them to CenturyLink's Detriment]

114. Verizon denies the allegations in Paragraph 114. Verizon made a good-faith effort to understand CenturyLink's disputes.²⁴⁰ But CenturyLink's credit disputes were barred under the Service Agreements from the moment CenturyLink concurred in each quarterly Billing Credit and Verizon issued the credit in the agreed-upon amount. Verizon's efforts to understand CenturyLink's concerns and engage in dialogue did not reflect its acceptance of untimely disputes; it reflected Verizon's attempts to understand CenturyLink's concerns and to maintain a good relationship with a valued customer.²⁴¹

²³⁷ See Compl. ¶ 112 (alleging "interwoven" nature of Service Agreements and Product Schedules and noting that certain Billing Credits "included credits for TLS services").

²³⁸ See Alston Decl. ¶¶ 6, 10-12.

²³⁹ See *id.* ¶¶ 8-12; Mason Decl. ¶¶ 49-51.

²⁴⁰ See Szol Decl. ¶¶ 26-35.

²⁴¹ See *id.*

115. Verizon denies the allegations in Paragraph 115 that Verizon “engaged in strategic delaying tactics” or that it ever implied that CenturyLink’s disputes were procedurally proper. The length of time that Verizon engaged in dialogue with CenturyLink about these disputes reflected Verizon’s effort to work cooperatively with a valued customer to understand its concerns.²⁴² Any “delay” was further exacerbated by CenturyLink’s improper challenge of Billing Credits that were “not subject to dispute.”²⁴³ Verizon lacks knowledge or information sufficient to form a belief as to CenturyLink’s state of mind when raising its disputes.

116. Verizon admits that CenturyLink on several occasions disputed the “exact same circuit in the same circumstances” in consecutive months and quarters. Verizon further admits that it used substantially the same process for calculating the credits throughout the lifespan of the Price Flex Deal. Verizon did so not because it thought it “had no obligation” to “fix erroneous circuits, charges, and credits,” but because it was following the process set forth in the Service Agreements, the contract tariffs, and the flat-rate formulas the parties negotiated at the inception of the Price Flex Deal.²⁴⁴ Verizon denies that the alleged “notice” CenturyLink provided about its disagreements with Verizon’s methodology – communicated through untimely “disputes” submitted via the wrong process – relieved CenturyLink from the contract provisions barring CenturyLink from disputing credits with which it had previously concurred. Verizon denies the remaining allegations in Paragraph 116.

117. Verizon denies the allegations in Paragraph 117. CenturyLink did not provide “notice” or “proper documentation” of its claims, and most of the alleged “errors” that

²⁴² *See id.*

²⁴³ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f); *see* Szol Decl. ¶ 10.

²⁴⁴ *See* Mason Decl. ¶¶ 56-101.

CenturyLink identifies lack merit.²⁴⁵ As stated above, the inadvertent circuit misclassifications that Verizon acknowledged in its response to the Informal Complaint rested on a formula error that on-balance benefited CenturyLink.²⁴⁶ Had CenturyLink clearly raised this issue in a timely fashion – before concurring in the Billing Credits it now challenges – Verizon would have investigated and *lowered* the credit amounts.

118. Verizon denies the allegations in Paragraph 118.

[c. Verizon’s Dispute Process Frustrated CenturyLink’s Efforts to Identify and Challenge Verizon’s Overcharges]

119. Verizon denies the allegations in Paragraph 119. As stated above, Verizon’s billing and reporting process gave CenturyLink the information it needed to evaluate Verizon’s proposed credits in a timely fashion and in accordance with the procedure set forth in the contracts.²⁴⁷

120. Verizon admits that, for PY5Q1 of the 2009 Service Agreement, Verizon provided circuit-level detail for DS3s but not for DS1s because Verizon was counting DS1 “units” by channel terminations rather than by circuit IDs. CenturyLink had everything it needed from monthly invoices and the Monthly Tracking Reports to perform its own DS1 “unit” calculation and compare it to Verizon’s calculation. Further, in PY1Q1 of the 2014 Service Agreement, Verizon admits that it provided circuit-level detail for DS1s without mileage. Verizon would have provided similar detail for DS1s with mileage had CenturyLink asked, which it did not.²⁴⁸ Verizon otherwise denies the allegations in Paragraph 120.

²⁴⁵ See Szol Decl. ¶ 11; Mason Decl. ¶¶ 56-95.

²⁴⁶ See *supra* ¶ 57; Mason Decl. ¶¶ 87-89.

²⁴⁷ See *supra* ¶ 73; Mason Decl. ¶¶ 24-41.

²⁴⁸ See Mason Decl. ¶¶ 17-18.

121. Verizon denies the allegations in Paragraph 121. CenturyLink could have fully evaluated Verizon’s stated credit calculations before expressing concurrence with Verizon’s proposed credit amounts.²⁴⁹ Verizon further denies that “CenturyLink had no choice but to express ‘concurrence’” with Verizon’s stated credit calculations. CenturyLink could have withheld its concurrence while it pursued its disputes.²⁵⁰

122. Verizon denies the allegation in Paragraph 122 that CenturyLink’s concurrences with Verizon’s credit calculations reflected a mere “threshold numerical calculation” rather than “agreement to Verizon’s underlying billing practices themselves.”²⁵¹ The Service Agreements required CenturyLink to concur in the final credit amount; after that, CenturyLink had no right to dispute the credit calculations or to seek additional credit amounts from Verizon.²⁵² Verizon lacks knowledge or information sufficient to form a belief as to when CenturyLink actually “became aware” of the alleged “billing discrepancies” at issue.

123. Paragraph 123 states a legal conclusion to which no response is required. Verizon denies that it violated the Service Agreements or their “overarching purpose.”

[2. Verizon’s Withholding of Undisputed Credits Is an Unjust and Unreasonable Practice]

124. Verizon denies the allegation in Paragraph 124 that Verizon withheld “undisputed” amounts. CenturyLink’s initial response to Verizon’s credit calculations from

²⁴⁹ See *id.* ¶¶ 24-41.

²⁵⁰ See Verizon’s Legal Analysis at 41-45.

²⁵¹ See *supra* ¶ 83.

²⁵² See 2009 Service Agreement, Ex. B § 7(e); 2014 Service Agreement, Ex. B § 8.

PY2Q2 – PY3Q4 was to dispute Verizon’s Billing Credit as too low.²⁵³ Verizon properly declined to issue the credit in those quarters until CenturyLink fully concurred in the amount.²⁵⁴

125. The allegations in Paragraph 125 regarding 47 U.S.C. § 201(b) and *NOS Communications, Inc.*, 16 FCC Rcd 8133, 8135 (2001), are legal conclusions to which no response is required. Verizon denies that it withheld any “undisputed credits” or that its conduct represented a “coercive attempt to limit CenturyLink’s rights.”²⁵⁵

[3. Failing to Provide a Reasonable Time in which CenturyLink Could Dispute Overcharges Is an Unjust and Unreasonable Practice]

126. The allegations in Paragraph 126 about 47 U.S.C. § 201 and § 415 are legal conclusions to which no response is required. Verizon denies that it failed to undertake a good-faith review of CenturyLink’s disputes or that its rejection of CenturyLink’s claims was otherwise unjust or unreasonable.

**[COUNT I
(Violation of Tariff Rates, Section 203(c), 47 U.S.C. § 203(a) & (c))]**

127. Verizon incorporates its responses to CenturyLink’s prior allegations.

128. Paragraph 128 states a legal conclusion to which no response is required.

129. Paragraph 129 states a legal conclusion to which no response is required.

130. Paragraph 130 states a legal conclusion to which no response is required.

Verizon otherwise denies the allegations.

131. Paragraph 131 states a legal conclusion to which no response is required.

Verizon otherwise denies the allegations.

132. Verizon denies the allegations in Paragraph 132.

²⁵³ See Credit History Chart at PY2Q2 – PY3Q4.

²⁵⁴ See Mason Decl. ¶¶ 42-51.

²⁵⁵ See *id.* ¶¶ 48-51.

133. Verizon denies the allegations in Paragraph 133. Verizon did not withhold any “undisputed” credit amounts, and its reporting was timely and accurate.²⁵⁶

134. Paragraph 134 states legal conclusions to which no response is required. Verizon otherwise denies the allegations.

135. Paragraph 135 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations.

**[COUNT II
(Unjust and Unreasonable Practices, Section 201, 47 U.S.C. § 201(b))]**

136. Verizon incorporates its responses to CenturyLink’s prior allegations.

137. Paragraph 137 states a legal conclusion to which no response is required.

138. Paragraph 138 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations.

139. Paragraph 139 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations.

140. Paragraph 140 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations.

141. Paragraph 141 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations.

142. Paragraph 142 states a legal conclusion to which no response is required. Verizon otherwise denies the allegations. As stated above, Verizon timely provided information sufficient for CenturyLink to evaluate Verizon’s proposed credit calculations. Verizon’s conduct in holding CenturyLink to the contractual dispute process was not unjust and unreasonable; it

²⁵⁶ See *id.* ¶¶ 9-23, 48-51.

was consistent with the parties’ negotiated arrangement and required by the filed-rate doctrine.²⁵⁷

143. Verizon denies the allegations in Paragraph 143 for the reasons stated above.

144. Verizon denies the allegations in Paragraph 144 for the reasons stated above.

145. Paragraph 145 states a legal conclusion to which no response is required.

Verizon otherwise denies the allegations.

146. Paragraph 146 states a legal conclusion to which no response is required.

Verizon otherwise denies the allegations.

[III. PRAYER FOR RELIEF]

147. Verizon denies that CenturyLink is entitled to any of the relief sought for the reasons stated above and in the accompanying Legal Analysis. Verizon notes specifically that CenturyLink’s request for “interest and attorney’s fees” conflicts with the Service Agreements²⁵⁸ and Commission precedent.²⁵⁹

²⁵⁷ See Verizon’s Legal Analysis at 45-49.

²⁵⁸ See 2009 Service Agreement, Ex. B § 7(e)(viii) (“The amount of the Billing Credits shall in no event be subject to any late payment, interest or penalty as set forth in Section 2 of the Tariffs.”); 2014 Service Agreement, Ex. B § 8(g) (same)

²⁵⁹ See Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 14557, ¶ 278 (2011) (“The Commission cannot award attorney’s fees or costs in a Section 208 formal complaint proceeding or in any other proceeding absent express statutory authority.”); 47 U.S.C. § 206 (attorney’s fees “to be fixed by the court”) (emphasis added).

AFFIRMATIVE DEFENSES

First Defense

148. CenturyLink’s claims are barred by the doctrines of release and waiver because it contractually forfeited its right to “dispute” Verizon’s determination of the quarterly Billing Credits once paid.²⁶⁰

Second Defense

149. To the extent CenturyLink alleges that the Service Agreements’ (and associated contract tariffs’) dispute provisions are unjust and unreasonable, its claims are barred by the doctrines of release and waiver. CenturyLink contractually forfeited its right to challenge any “term[], condition[], rate[], or provision[] contained in” the Service Agreements.²⁶¹

Third Defense

150. To the extent CenturyLink alleges that Verizon’s Billing Credits were too low for the periods from March 2013 – February 2014 (PY5Q1 – PY5Q4), its claims are barred by the two-year statute of limitations in 47 U.S.C. § 415(b). CenturyLink’s claims are for damages, rather than for overcharges, and those claims accrued when Verizon notified CenturyLink of the final credit amount.²⁶² Those accrual dates were as follows: July 25, 2013 (PY5Q1), October 25, 2013 (PY5Q2), January 29, 2014 (PY5Q3), and May 9, 2014 (PY5Q4).²⁶³ All were more than two years before CenturyLink filed its Informal Complaint.²⁶⁴

²⁶⁰ See 2009 Service Agreement, Ex. B § 7(e); 2014 Service Agreement, Ex. B § 8; Verizon’s Legal Analysis at 20-26.

²⁶¹ 2009 Service Agreement § 3(d)(ii); 2014 Service Agreement § 3(d)(2).

²⁶² See Verizon’s Legal Analysis at 66-68.

²⁶³ See Credit History Chart at PY5Q1 – PY5Q4.

²⁶⁴ See Compl. ¶ 20 (Informal Complaint filed on June 17, 2016).

151. To the extent CenturyLink asserts a claim based on Verizon's alleged failure to pay Billing Credits within 60 days of the end of the quarter for PY5Q1 – PY2Q3, its claims are barred by the two-year statute of limitations in 47 U.S.C. § 415(b).²⁶⁵ Those claims accrued once 60 days elapsed at the end of the quarter, and, for PY2Q3, that date is January 29, 2016.²⁶⁶ That is more than two years before CenturyLink filed its Formal Complaint. In addition, these claims – to the extent CenturyLink even alleges them²⁶⁷ – do not relate back to the Informal Complaint, which contained no allegation about any supposed breach of a 60-day deadline.

Fourth Defense

152. CenturyLink's claims for damages are barred by the doctrines of setoff and recoupment.

²⁶⁵ See Verizon's Legal Analysis at 68.

²⁶⁶ See Compl. ¶ 78 (PY2Q3 ended on November 30, 2015).

²⁶⁷ Verizon does not concede or otherwise imply that CenturyLink has properly alleged a breach of any payment deadline.

Dated: April 12, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Branson', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 12, 2018, pursuant to the Protective Order and the February 9, 2018 Letter Ruling, I caused a copy of the foregoing Answer to CenturyLink's Formal Complaint, as well as all accompanying materials, to be served as indicated below on the following:

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Joshua D. Branson

Tab A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C. Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

VERIZON'S LEGAL ANALYSIS

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April 12, 2018

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INTRODUCTION AND SUMMARY

CenturyLink's claims represent a belated effort to rewrite the terms of a business deal it voluntarily negotiated in 2009 and renegotiated in 2014.¹ The deal, though complicated in its details, was simple in concept: Verizon agreed to provide CenturyLink with steeply discounted flat-rate pricing on special-access services, and in return CenturyLink agreed (among other things) to revenue commitments and restrictions on its ability to file disputes. Verizon kept its part of the bargain. There is no dispute that Verizon correctly calculated and delivered large discounts – thus providing CenturyLink with substantial savings – on the vast majority of circuits CenturyLink purchased. CenturyLink, however, seeks to renege on the deal because it disagrees with Verizon's calculations for a small fraction of those circuits. Such disagreements, whatever their merits, do not permit CenturyLink to file the sort of costly and belated disputes that Verizon bargained to avoid. If CenturyLink wanted the ability to bring cases like this one, it should have negotiated a different contract. The Bureau should dismiss the Complaint with prejudice.

The parties implemented their business deal through two negotiated agreements (in 2009 and in 2014) that they also memorialized in contract tariffs. Under those agreements, Verizon billed CenturyLink each month for special-access services at discounted rates available under Verizon's base tariffs. Then, at the end of each quarter, Verizon calculated a "Billing Credit" that, once remitted to CenturyLink, would reduce CenturyLink's effective rate to the even lower "flat rates" specified in the contracts. Before Verizon issued any Billing Credit, however, it first

¹ Defendants (individually and collectively, "Verizon"), pursuant to 47 C.F.R. § 1.724(b) and the Enforcement Bureau's February 9, 2018 and March 13, 2018 letter rulings, submit this Legal Analysis concerning the February 26, 2018 Formal Complaint ("Complaint" or "Compl.") filed by CenturyLink Communications, LLC (together with its subsidiaries, "CenturyLink"). This Legal Analysis addresses and builds upon the claims and defenses set forth in Verizon's Answer, which Verizon is filing concurrently.

disclosed its calculations to CenturyLink and obtained CenturyLink's concurrence. CenturyLink was free to agree or disagree with Verizon's calculation, and only after the parties agreed in writing to the credit amount for a quarter could Verizon issue the Billing Credit. But under the contracts and contract tariffs, once CenturyLink concurred in the credit amount and received payment, the "Billing Credits as determined by Verizon [we]re not subject to dispute."

It was no accident that the contracts barred disputes over Billing Credits that Verizon had paid in the agreed-upon amounts. The dispute restrictions reflected one of Verizon's central negotiating objectives: to ensure that it would be able to close its books on each quarter after issuing the Billing Credit. That assurance served Verizon's legitimate business interests in finality and certainty. If Verizon was going to pay quarterly credits giving CenturyLink major discounts off its already-discounted tariffed rates, it wanted the certainty of knowing it would not later have to face disagreements over (and, potentially, adjustments of) the credit amounts. To protect that interest, Verizon negotiated (and CenturyLink agreed to) an interlocking set of provisions that – in exchange for the significant discounts Verizon provided – substantially curtailed CenturyLink's ability to dispute Verizon's special-access billing under the deal.

For more than five years, CenturyLink appeared satisfied with this arrangement. Each quarter, Verizon disclosed (and CenturyLink agreed with) its Billing Credit calculations, and CenturyLink reaped the benefit of the resulting discounts on the special-access services it bought from Verizon. But things changed in mid-2014 when CenturyLink hired a consultant that began to complain about the way Verizon was calculating the Billing Credits. Verizon denied the consultant's disputes primarily because the contracts precluded CenturyLink from challenging Billing Credits to which it had already agreed. Indeed, CenturyLink expressly agreed to all 16 Billing Credits that the Complaint now challenges. CenturyLink's after-the-fact claims conflict

with its prior agreements and are precluded by multiple contract provisions barring precisely these types of after-the-fact disputes.

CenturyLink's claims also fail on the merits. Broadly speaking, the Complaint alleges that Verizon miscounted the number of DS1 and DS3 "units" billed to CenturyLink each quarter, and in doing so miscalculated the Billing Credits. But the per-unit flat rates in the contracts – which supplied the core mathematical foundation for the quarterly credit calculations – were predicated on the very "unit"-counting methodology CenturyLink now disputes. In fact, in the part of the contracts laying out those flat rates, CenturyLink expressly stipulated to "unit" counts that cannot be reconciled with the methodology it now propounds. If CenturyLink's methodology had been applied in the contracts, the resulting flat rates would have been higher (and thus less favorable to CenturyLink) than the ones the parties actually negotiated. That inconsistency alone provides reason enough to reject CenturyLink's claims.

As for the details about the particular special-access circuits at issue, the Complaint generally gets the facts wrong. Verizon has reviewed CenturyLink's disputes in detail and determined that it properly counted and classified most of the circuits in question. In most cases, CenturyLink's allegations about those circuits rest on a misreading of the relevant contract language, a misunderstanding of the way Verizon billed the circuit in question, or both. And although Verizon also inadvertently miscounted a small number of circuits in calculating the Billing Credits, CenturyLink on-balance benefited from many of those errors.

In a billing arrangement as complicated as the one here, the existence of a few isolated billing errors is unsurprising. The roughly 1-2% error rate that CenturyLink's claims actually reveal is well within the range the Commission has held is acceptable – even to be expected – in complex wholesale relationships. And it is well within the range that a sophisticated party like

CenturyLink could rationally agree to forgo, in return for the myriad benefits (including discounted pricing and simplicity of administration) that the Price Flex Deal conferred.

If CenturyLink nonetheless believed these trivial errors were worth disputing, it had more than enough information to do so in real time. Instead, CenturyLink opted repeatedly to agree with Verizon’s credit calculations on the front end, pocket the substantial discounts the Billing Credits provided, and then pursue adjustments to those credits after the fact. Although CenturyLink offers a litany of excuses for this dilatory conduct – blaming everything from Verizon’s electronic-dispute system to Verizon’s tracking reports – none is persuasive. Simply put, CenturyLink could and should have pursued these disputes *before* Verizon issued the Billing Credits at issue. Having failed to do so, CenturyLink’s claims should be dismissed.

BACKGROUND

A. Verizon’s Provision Of Discounted Business Data Services To CenturyLink

Verizon has long provided a wide array of wholesale business data services to CenturyLink. This case concerns special-access services, which provide high-capacity data transmission capabilities over traditional circuit-based DS1 and DS3 facilities.² Other business data services involve newer packet-based technologies, such as Ethernet.³ Historically, special-access services have been regulated by the Commission and provided via tariff, whereas newer packet-based services have remained largely unregulated and provided via private contract.⁴

² See Report and Order, *Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd 3459, ¶ 6 (2017) (“*Business Data Services Order*”).

³ See *id.* ¶¶ 4, 6.

⁴ See *id.* ¶¶ 6-9 (describing Commission’s forbearance decisions regarding “newer packet-based and higher bandwidth optical transmission broadband services” and contrasting those decisions with historical price regulation of DS1 and DS3 services).

At all times relevant to this case, Verizon sold unregulated business data products (which are not at issue here) to CenturyLink pursuant to a 2006 Master Services Agreement (“MSA”).⁵ The MSA provided a negotiated framework through which CenturyLink could purchase a variety of packet-based data products from Verizon.⁶ Those products were subject to their own terms and conditions that were memorialized in “product schedules” attached to the MSA.⁷ Other attachments to the MSA provided revised pricing or other enhancements to one or more such products.⁸ Although the MSA attachments varied, each reflected a similar exchange of value: Verizon provided discounted wholesale pricing on data services, and CenturyLink committed to meet minimum volume thresholds guaranteeing Verizon a predictable flow of revenue.⁹

Separately, the parties also negotiated a framework for Verizon to provide CenturyLink with tariffed special-access services. The parties referred to this special-access arrangement as the “Price Flex Deal.”¹⁰ The terms of the Price Flex Deal consisted of two bilaterally negotiated Service Agreements – one executed in 2009, the other in 2014 – and associated contract tariffs filed with the Commission.¹¹ Verizon provided special-access services under the Price Flex

⁵ See CenturyLink Exhibit 1. Verizon refers to the exhibits attached to CenturyLink’s Complaint as “CTL Ex. __” and to the exhibits attached to Verizon’s Answer as “VZ Ex. __.”

⁶ See Declaration of Christopher A. Alston ¶ 4 (“Alston Decl.”) (describing MSA’s purpose); MSA § 22 (describing MSA’s negotiation).

⁷ See CTL Exs. 2, 4, 6, 11.

⁸ See Alston Decl. ¶ 7; *see also, e.g.*, CTL Ex. 11 (sixth amendment to MSA Attachment 2).

⁹ See MSA § 5.2 **[[BEGIN CONFIDENTIAL]]**

CONFIDENTIAL]] **[[END**

¹⁰ See CTL Ex. 11 § 2.

¹¹ See *id.* The 2009 Service Agreement appears as CTL Ex. 3, and the 2014 Service Agreement appears as CTL Ex. 5. Both Agreements required Verizon to memorialize their terms in contract tariffs. See 2009 Service Agreement § 3(a); 2014 Service Agreement § 3(a). Verizon

Deal from March 1, 2009 (when the 2009 Service Agreement took effect), until February 28, 2017 (when the 2014 Service Agreement expired).

The parties recognized that the Price Flex Deal – governing Verizon’s provision of regulated special-access services – was interrelated with Verizon’s provision of packet-based data services under the MSA.¹² The crux of this interrelationship was to provide a glide path for CenturyLink’s anticipated transition from legacy DS1 and DS3 services to newer packet-based services such as Ethernet.¹³ The parties thus tied together CenturyLink’s annual revenue commitments across those various products, establishing a single, technology-agnostic revenue pool. This arrangement gave CenturyLink flexibility: as it shifted from legacy services to Ethernet, its increased Ethernet spending would offset its declining spending on DS1s and DS3s for purposes of its annual commitments.¹⁴ Despite that broad interrelationship, however, the Price Flex Deal remained a separate arrangement subject to stand-alone contracts. Indeed, the Service Agreements contained integration clauses; did not themselves reference the MSA; and (unlike the MSA) were memorialized in contract tariffs filed with the Commission.¹⁵

filed Exhibit B to the 2009 Service Agreement as a contract tariff at Tariff No. 1 § 21, Option 57; Tariff No. 11 § 32, Option 55; and Tariff No. 14 § 21, Option 29. Verizon filed Exhibit B to the 2014 Service Agreement as a contract tariff at Tariff No. 1 § 21, Option 65; Tariff No. 11 § 32, Option 65; and Tariff No. 14 § 21, Option 34.

¹² See CTL Ex. 4 (“MSA Att. 13”) § 9.4 (describing interrelationship).

¹³ See CTL Ex. 2 (“MSA Att. 11”) at 1 (recognizing CenturyLink **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**); see also *Business Data Services Order* ¶ 24 (“Functionally, [time division multiplexing (“TDM”)] and packet-based services are broadly interchangeable in the business data services realm as both are used to provide connectivity for data network and point-to-point transmissions and both services can be delivered over the same network infrastructure.”).

¹⁴ See MSA Att. 13 §§ 6-8 (explaining annual revenue commitments and surcharge calculations); Alston Decl. ¶¶ 6-7 (describing overall contractual relationship).

¹⁵ See 2009 Service Agreement § 6(h); 2014 Service Agreement § 6(h).

B. The 2009 And 2014 Service Agreements

1. The Flat Rates And Quarterly Billing Credits

The 2009 and 2014 Service Agreements reflected a bespoke arrangement providing special-access services tailored to CenturyLink’s unique circumstances.¹⁶ That arrangement reflected a basic exchange between the parties: Verizon gave CenturyLink very favorable pricing on DS1 and DS3 services, and CenturyLink agreed (among other things) to annual revenue commitments and to limits on its ability to file disputes concerning Verizon’s billing of those discounted services.¹⁷ The Service Agreements – and the contract tariffs they accompanied – each reflected that core bargain.¹⁸ Without the dispute protections, Verizon would not have agreed to the rate structure and discounted pricing that CenturyLink ultimately obtained.¹⁹

The parties implemented the bargain through quarterly “Billing Credits.”²⁰ Broadly speaking, the Billing Credits worked as follows: First, Verizon billed CenturyLink monthly at

¹⁶ See 2009 Service Agreement § 4(b) (“The parties acknowledge that the rates and other terms and conditions of this Agreement are premised on Customer’s commitments, unique network design requirements, Customer’s service mix, usage patterns and concentration, and other characteristics.”); 2014 Service Agreement § 4(b) (same); *see also generally* Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221, ¶ 128 (1999) (“Access customers benefit from contract tariffs because they enable incumbent LECs to tailor services to their customers’ individual needs.”).

¹⁷ See Alston Decl. ¶¶ 8-12.

¹⁸ See 2009 Service Agreement, Ex. B § 1 (“In consideration for such aggregate discounts and Billing Credits, and subject to the terms and conditions of this Agreement and the Contract Tariffs, Customer hereby agrees to abide by the requirements set forth in further detail in this Exhibit B.”); *id.* § 7(e) (dispute provisions); 2014 Service Agreement, Ex. B § 1 (“In consideration for such aggregate discounts and Billing Credits, and subject to the terms and conditions of this Agreement and the Contract Tariffs, Customer hereby agrees to abide by the requirements set forth in further detail in this Exhibit B.”); *id.* § 8 (dispute provisions).

¹⁹ See Alston Decl. ¶ 12.

²⁰ See 2009 Service Agreement, Ex. B § 7(a)-(d); 2014 Service Agreement, Ex. B § 7.

standard rates under a Commitment Discount Plan (“CDP”) – that is, a tariffed plan that offered discounts off Verizon’s month-to-month rates.²¹ Then, at the end of each quarter, Verizon calculated a credit that rebated to CenturyLink some of those amounts, resulting in discounts greater than those available under the CDP. The Billing Credits represented the difference between two numbers: (1) the monthly amounts that CenturyLink had paid at CDP rates; and (2) the amounts it would have paid had Verizon instead charged at the flat rates specified in the Service Agreements. By issuing a credit calculated in that way, Verizon reduced CenturyLink’s effective rate to the agreed-upon per-unit flat rates specified in the contracts.²²

This flat-rate pricing offered CenturyLink a number of benefits, including pricing simplicity (by providing a “one-size-fits-all” per-unit price) and lower rates.²³ Unsurprisingly, the flat rates thus were at the heart of the parties’ contract negotiations.²⁴ The parties negotiated per-unit rates applicable to each of the three service types at issue: DS1 service, DS3 CLF (*i.e.*, multiplexed) service, and DS3 CLS (*i.e.*, point-to-point) service.²⁵ The rates for those services were calculated as a percentage of the average revenue per unit (“ARPU”) that Verizon had realized on its sales to CenturyLink during a three-month reference period preceding each Agreement.²⁶ To arrive at the flat rates, the parties summed up Verizon’s special-access revenues from CenturyLink during the three-month reference period, divided by the number of “units” Verizon had billed to CenturyLink (thus yielding the ARPU), and then agreed to a fixed

²¹ See Alston Decl. ¶ 13; Tariff No. 1 § 25.1; Tariff No. 11 § 25.1.

²² See Alston Decl. ¶¶ 9, 15-16.

²³ See *id.* ¶¶ 13-14, 20.

²⁴ See *id.* ¶ 15.

²⁵ See 2009 Service Agreement, Ex. B § 2 (covering those three services).

²⁶ See Alston Decl. ¶¶ 16-25 (explaining flat-rate calculation).

percentage discount off the ARPU number. This calculation, which was spelled out in both Service Agreements, yielded specific per-unit flat rates. Those rates were fixed at the inception of each Agreement and grew increasingly favorable to CenturyLink over time.²⁷

For this calculation to work correctly, the parties first had to agree on the number of “units” Verizon had billed during the three-month reference period. Thus, to avoid any confusion, the parties expressly spelled out the DS3 CLS and DS1 “unit” counts in both Service Agreements.²⁸ Verizon determined those counts by running a standard “volume report,” developed by its Offer Management Group, to analyze CenturyLink’s monthly invoices from January-March 2009 and to tabulate the number of DS1 and DS3 CLS “units” for which Verizon had billed.²⁹ This was the same standard report that Verizon used to generate its “unit” counts throughout the life of the Price Flex Deal, and it used the same assumptions (for example, counting meet-point circuits twice) that CenturyLink now claims were erroneous.³⁰

In finalizing the contract negotiations, Verizon ran the volume report and determined (among other things) that it had billed CenturyLink for **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED].³¹ **[[END CONFIDENTIAL]]** [REDACTED] “unit” count, in turn, was memorialized in the contract and used as the basis for the DS3 flat rates.³² Had the parties

²⁷ See 2009 Service Agreement, Ex. B Att. 1; 2014 Service Agreement, Ex. B Att. 1.

²⁸ The parties did not need to agree on the “unit” count for DS3 CLF circuits, whose flat rate was keyed not to the number of DS3 CLF “units” but to the DS3 CLS flat rate. See 2009 Service Agreement, Ex. B § 7 & Tbl. 1; 2014 Service Agreement, Ex. B § 7(b) & Tbl. 1.

²⁹ See Declaration of Patricia Mason ¶ 98 (“Mason Decl.”).

³⁰ See *id.* ¶ 99.

³¹ See *id.* ¶ 97.

³² See 2009 Service Agreement, Ex. B Att. 1 (“DS3 CLS Billed Units is **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**”).

counted differently – for example, had they counted meet-point circuits as only one “unit” – the total count would have changed, and so would have the flat rates.³³

Going forward, the fixed flat rates supplied one of two key inputs into the Billing Credit calculation each quarter. The other was the number of “units” billed each quarter. Under the 2009 Service Agreement, “units” were defined by Class of Service and Universal Service Ordering Code (“USOC”). A DS3 circuit (or a DS1 channel termination) was a “unit” if it billed a qualifying Class of Service-USOC combination.³⁴ Under the 2014 Service Agreement, those requirements were replaced with a streamlined definition pegged simply to a circuit’s bandwidth.³⁵ To calculate the Billing Credit each quarter, the “unit” counts were multiplied by the flat rates and then subtracted from the monthly revenue Verizon had collected.³⁶ In that way, the credits reflected essentially a “price” times “quantity” calculation, where the “price” was the flat rate and the “quantity” was the number of units in service. That quantity – Verizon’s calculation of the units in service – is at the heart of CenturyLink’s claims here.

CenturyLink’s disputes aside, the Billing Credits unquestionably delivered sizable discounts off Verizon’s month-to-month rates beyond those available under the CDP.³⁷ By the end of the Price Flex Deal, CenturyLink’s discount had grown to approximately **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** off Verizon’s standard month-to-month rates.³⁸ That discount was so large that it enabled

³³ See Mason Decl. ¶¶ 96-101.

³⁴ See 2009 Service Agreement, Ex. B §§ 2, 5(a).

³⁵ See 2014 Service Agreement, Ex. B §§ 2, 6.

³⁶ See 2009 Service Agreement, Ex. B § 7; 2014 Service Agreement, Ex. B § 7.

³⁷ See Alston Decl. ¶ 9.

³⁸ See *id.* ¶ 13.

CenturyLink to attract more valuable special-access business of its own.³⁹ The resultant value to CenturyLink – in both discounts and the ability to attract valuable special-access business – far outweighs the disputed amounts at issue in this case.⁴⁰

2. The Dispute Provisions

The Billing Credits were not just a vehicle for delivering price discounts to CenturyLink; they also supplied Verizon with significant protection against billing disputes. From Verizon's perspective, dispute protection was an essential part of the bargain the parties struck in entering the Price Flex Deal.⁴¹ Billing disputes create administrative costs and uncertainty, particularly with respect to credit formulas as complicated as the ones set forth in the Service Agreements.⁴² Verizon therefore was willing to give CenturyLink the pricing structure it sought only if CenturyLink agreed (among other things) to limits on its ability to raise such disputes.⁴³ In negotiating those limits, Verizon placed a premium on certainty and finality. Its objective was to obtain contract language guaranteeing that, once it paid a Billing Credit for a quarter, it could close the books on that quarter for good, with no risk of needing to adjust credit amounts later.⁴⁴

The Service Agreements implemented that objective through an interlocking set of dispute provisions limiting CenturyLink's ability to challenge Verizon's quarterly credit

³⁹ *See id.* ¶ 14.

⁴⁰ *See id.*

⁴¹ *See id.* ¶¶ 8-12.

⁴² *See id.*; Mason Decl. ¶¶ 49-50.

⁴³ *See* Alston Decl. ¶¶ 10-11 (explaining Verizon's *ex ante* objectives in negotiating the dispute provisions); Mason Decl. ¶ 49 (explaining practical importance of those provisions from the perspective of the Price Flex Deal's day-to-day administration).

⁴⁴ *See* Alston Decl. ¶ 10.

calculations.⁴⁵ Those provisions tracked the Price Flex Deal’s dual structure, under which Verizon continued to bill CenturyLink at its CDP rates on a monthly basis – just as it had before the deal – and then calculated and remitted to CenturyLink a Billing Credit after the end of each quarter.⁴⁶ The Service Agreements placed restrictions on CenturyLink’s ability to dispute both Verizon’s monthly charges and the quarterly Billing Credits based on such charges.

Those restrictions operated in three basic ways. First, the Agreements excluded from the credit calculations any monthly charges for which CenturyLink had filed an open dispute.⁴⁷ In other words, if CenturyLink disputed the monthly charges for a given DS3 circuit on Verizon’s bills during a quarter, Verizon excluded those disputed charges from the Billing Credit for that quarter. And no matter how the parties later resolved such disputes, there could be “no adjustment to the Billing Credits” – thus ensuring that Verizon’s quarterly credit calculations remained insulated from the outcome of the parties’ ordinary billing disputes.⁴⁸ To allow Verizon sufficient time to exclude disputed monthly charges from the Billing Credits, the Service Agreements further required CenturyLink to “submit such disputes to Verizon no later than the thirtieth (30th) day following the end of each Quarter.”⁴⁹ If CenturyLink missed that deadline,

⁴⁵ See 2009 Service Agreement, Ex. B § 7(e); 2014 Service Agreement, Ex. B § 8.

⁴⁶ See Mason Decl. ¶¶ 9-23 (describing six-step credit calculation process, beginning with a monthly bill charging Verizon’s standard CDP rates).

⁴⁷ See 2009 Service Agreement, Ex. B § 7(e)(i) (“Verizon shall not include in the calculation of the Billing Credits any amounts which are unpaid and/or disputed by Customer as of the thirtieth (30th) day following the end of each Quarter.”); 2014 Service Agreement, Ex. B § 8(a) (same).

⁴⁸ 2009 Service Agreement, Ex. B § 7(e)(v); *see also* 2009 Service Agreement, Ex. B § 7(e)(iv) (“Verizon shall not include in [monthly recurring charges (“MRCs”)] any credits or debits for Services provided during any prior periods . . . other than the then current Quarter for which the Billing Credits are being calculated.”); 2014 Service Agreement, Ex. B § 8(b) (same).

⁴⁹ 2009 Service Agreement, Ex. B § 7(e)(ii); 2014 Service Agreement, Ex. B § 8(c).

and Verizon proceeded to include the underlying charges in its quarterly credit calculation, CenturyLink forfeited its right to dispute those underlying charges “at any time in the future.”⁵⁰

Second, just as the credit amounts were insulated from disputes about monthly charges, so too were they insulated from back-billed monthly charges. Thus, if Verizon billed “amounts after the determination of the Billing Credits that would have otherwise been included in the determination of the Billing Credits” – for example, if it later billed for a DS3 circuit that had been in service during a quarter for which a Billing Credit had already issued – “there in no event will be any adjustment to the Billing Credits.”⁵¹ Nor could the credit amounts change due to timing-related disagreements; the Billing Credits were shielded from “any late payment, interest or penalty.”⁵² The goal of these provisions, as with the others, was finality. Verizon wanted certainty that a Billing Credit, once issued, could not later be adjusted – in either direction.⁵³

Third, and most relevant to this case, the Service Agreements created a “prohibition against disputes” of the Billing Credits themselves, providing that the “Billing Credits as determined by Verizon are not subject to dispute” once paid.⁵⁴ Verizon intended that provision to provide a bulwark against costly, after-the-fact litigation over the credit calculations.⁵⁵ At the same time, CenturyLink’s interests were protected because Verizon paid Billing Credits only after CenturyLink concurred fully in the credit amount.⁵⁶ The 2014 Service Agreement codified

⁵⁰ 2009 Service Agreement, Ex. B § 7(e)(iii); 2014 Service Agreement, Ex. B § 8(e).

⁵¹ 2009 Service Agreement, Ex. B § 7(e)(vi); 2014 Service Agreement, Ex. B § 8(d).

⁵² 2009 Service Agreement, Ex. B § 7(e)(viii); 2014 Service Agreement, Ex. B § 8(g).

⁵³ See Alston Decl. ¶¶ 10-12.

⁵⁴ 2014 Service Agreement, Ex. B § 8(f); see 2009 Service Agreement, Ex. B § 7(e)(vii).

⁵⁵ See Alston Decl. ¶ 12.

⁵⁶ See Mason Decl. ¶¶ 9-23.

that arrangement by making clear that “Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer.”⁵⁷ But once CenturyLink provided such agreement, it could dispute the resulting credit only if Verizon issued a credit amount different from the amount to which CenturyLink had agreed.⁵⁸ All other disputes were waived.

C. Verizon’s Administration Of The Price Flex Deal

Throughout the life of the Price Flex Deal, Verizon’s methodology for calculating the Billing Credits remained consistent. Verizon applied the formula set forth in the Service Agreements and generated the credits using data drawn from CenturyLink’s monthly bills.⁵⁹ To that end, Verizon first summed up the monthly DS3 and DS1 revenue that Verizon collected under the CenturyLink Billing Account Numbers (“BANs”) included in the Price Flex Deal. Next, Verizon tallied the “units” billing on those same BANs by looking at circuit IDs for DS3s and channel terminations for DS1s. It generated those “unit” counts by running the same standard “volume report” the parties had used to develop the per-unit flat rates in the Service Agreements.⁶⁰ Verizon then multiplied the “unit” counts by the applicable flat rates, added them all together, and subtracted the total from the monthly revenue amounts. After then deducting the monthly charges subject to open disputes, the remainder was the Billing Credit.⁶¹

Although the Billing Credits were shielded from dispute, Verizon did not arrive at the final credit amounts unilaterally. On the contrary: before Verizon paid any Billing Credit, it first

⁵⁷ 2014 Service Agreement, Ex. B § 8(f).

⁵⁸ *See id.* (making the “prohibition against disputes” inapplicable to “situation[s] where Verizon applies a Billing Credit that does not match the mutually agreed upon credit amount”).

⁵⁹ *See* Mason Decl. ¶¶ 4-6 (describing Verizon’s credit-calculation process in detail).

⁶⁰ *See id.* ¶¶ 98-101.

⁶¹ *See id.* ¶¶ 13-14 (detailing the process of deducting open-dispute amounts).

disclosed the exact credit amount and obtained CenturyLink’s concurrence. Each quarter, Verizon followed a six-step process for obtaining a concurrence and issuing the credit.⁶²

- **Step #1: Monthly Billing.** At the beginning of each monthly billing cycle, Verizon sent CenturyLink monthly invoices. The invoices included Customer Service Records (“CSRs”) containing exhaustive detail about every special-access circuit for which Verizon was billing. Verizon sent the invoices electronically, and CenturyLink loaded them into its electronic system for analysis.
- **Step #2: Monthly Reporting.** After the end of each month, Verizon sent CenturyLink a courtesy Monthly Tracking Report providing an in-progress calculation of the Billing Credit through the end of that month. This Monthly Tracking Report provided (among other things) Verizon’s count of the number of “units” it had billed. By the end of a quarter’s third month, the Monthly Tracking Report (by that point containing data for all three months) contained a preliminary calculation of the total quarterly Billing Credit.
- **Step #3: Dispute Reconciliation.** After sending CenturyLink the preliminary credit calculations, Verizon sought CenturyLink’s agreement on the total amount of monthly charges that were subject to open disputes. It did so because the Service Agreements excluded from the credit calculations any charges that were disputed as of the 30th day following the end of a quarter. The parties’ respective dispute teams then worked together to reach consensus on the total amount of open disputes.
- **Step #4: Revised Credit Calculation.** After obtaining agreement at Step #3 above, Verizon deducted the agreed-upon dispute amounts from the total quarterly Billing Credit (which it had preliminarily calculated at Step #2). It then sent CenturyLink the revised credit number, along with a package of detailed reports providing support for its calculations. Those reports included full circuit-level data about each DS3 circuit Verizon had counted as a “unit.”⁶³
- **Step #5: Concurrence.** In an email transmitting the revised calculations at Step #4 above, Verizon asked CenturyLink whether it agreed with Verizon’s proposed credit amount. After reviewing the reports to “confirm the unit numbers,”⁶⁴ CenturyLink typically responded with an email expressing agreement, stating: “We agree with the calculations = credit amount of [amount] earned in [quarter].”⁶⁵

⁶² See *id.* ¶¶ 9-23 (describing the full six-step process).

⁶³ Under the 2009 Service Agreement, Verizon did not provide DS1 circuit-level detail because DS1 “units” were counted by channel termination rather than by circuit. Under the 2014 Service Agreement, Verizon provided circuit-level detail for DS1s without mileage because those circuits had a separate flat rate. Had CenturyLink ever requested additional circuit-level detail for DS1s (it never did), Verizon would have provided it. See Mason Decl. ¶¶ 17-18.

⁶⁴ *E.g.*, CTL Ex. 37.04.

⁶⁵ *E.g.*, CTL Ex. 40.12 (5/9/14 email concurring in PY5Q4 credit).

- **Step #6: Credit Payment.** After obtaining concurrence, Verizon promptly approved the Billing Credit for payment through its in-house Receivables Management System. The system automatically posted the credits to the appropriate BANs during the next billing cycle. Verizon then closed its books on the quarter.

This six-step process gave CenturyLink multiple opportunities to analyze Verizon's credit calculations. The various reports that Verizon sent CenturyLink – all drawn from the same data source that Verizon used to calculate the Billing Credits themselves – provided CenturyLink with ample information from which to audit Verizon's calculations or to propose an alternative.⁶⁶

D. CenturyLink's Concurrences And Disputes

The Price Flex Deal operated smoothly for many years. Verizon used the same methodology to calculate the Billing Credits each quarter; it always disclosed that methodology along with its final credit numbers; CenturyLink occasionally raised disagreements that the parties worked through; and Verizon then issued the credit in the amount on which the parties had agreed.⁶⁷ In every quarter, CenturyLink concurred in the credit amount before Verizon paid it. In fact, for the Price Flex Deal's first 25 quarters (it lasted 32 quarters in total), CenturyLink responded to Verizon's credit calculations by expressing unqualified agreement.⁶⁸ All the while, it gave no indication that it thought Verizon was erroneously counting DS1 or DS3 units.⁶⁹

Things changed after CenturyLink retained Sage Management, Inc. ("Sage"), a third-party consultant whose website states "We Find Money on Telecom Bills™."⁷⁰ A few months

⁶⁶ See Mason Decl. ¶¶ 24-41.

⁶⁷ See *id.* ¶¶ 24-33.

⁶⁸ See *id.* ¶¶ 31-34, 42; VZ Ex. 1 ("Credit History Chart") (surveying history of Verizon's quarterly credit calculations and CenturyLink's concurrence in those calculations).

⁶⁹ See Mason Decl. ¶ 33.

⁷⁰ Sage Management, Inc., at <http://www.sagemi.com> (last visited Apr. 5, 2018).

after CenturyLink retained Sage in May 2014, Sage employees began complaining that Verizon was counting too many “units” under the Service Agreements.⁷¹ On June 19, 2014, CenturyLink electronically submitted its first batch of disputes challenging the “unit” counts for Billing Credits that Verizon had issued in 2013.⁷² Verizon’s electronic dispute system automatically rejected those claims (as well as claims submitted the following month) because the submitted forms did not include a valid circuit ID.⁷³ Even so, Verizon’s dispute team engaged in extensive dialogue with CenturyLink in an effort to fully understand its concerns.⁷⁴

On September 15, 2014, after the parties had exchanged some circuit data and held several calls, Verizon emailed CenturyLink with its “final response to the [Price Flex Deal] issue.”⁷⁵ The response explained that Verizon was properly counting DS3 “units” under the contract and that CenturyLink had “agreed to the credits” each quarter while possessing “all supporting documentation” necessary to understand Verizon’s calculations.⁷⁶ At this point, having verified that CenturyLink’s claims were barred, Verizon considered the matter closed.⁷⁷

The parties’ respective dispute teams continued to have dialogue about these issues over the next 18 months, but none changed Verizon’s view that CenturyLink was improperly attempting to challenge credits that were “not subject to dispute.”⁷⁸ Meanwhile, CenturyLink

⁷¹ See Declaration of David Szol ¶¶ 26-35 (“Szol Decl.”).

⁷² See VZ Ex. 2 (“Dispute History Chart”) (providing comprehensive survey of CenturyLink’s submitted claims at issue in this case); Szol Decl. ¶ 19.

⁷³ See Szol Decl. ¶¶ 19-20, 22, 24.

⁷⁴ See *id.* ¶¶ 26-35.

⁷⁵ CTL Ex. 40.03, at 2.

⁷⁶ *Id.* at 2-3.

⁷⁷ See Szol Decl. ¶ 29.

⁷⁸ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f); *see also* Szol Decl. ¶¶ 30-35.

continued to concur in Verizon’s proposed credit amounts each quarter. Until Plan Year 2 Quarter 2 (“PY2Q2”)⁷⁹ – which covered June 2015 to August 2015 – CenturyLink responded to each of Verizon’s calculations with unqualified agreement. Verizon therefore continued to issue the Billing Credits each quarter in the amounts to which CenturyLink had agreed.

On October 19, 2015 – six-and-a-half years into the Price Flex Deal – CenturyLink changed its approach. Rather than immediately concur with Verizon’s credit calculation for PY2Q2, CenturyLink responded that Verizon’s proposed credit amount was too low, identifying “an additional [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] in credits” Verizon supposedly owed due to “3 errors” in its methodology.⁸⁰ CenturyLink asked Verizon immediately to pay the originally proposed amount – something CenturyLink called the “undisputed portion of the credit” – while stating it would subsequently “file a formal dispute on these errors.”⁸¹

Verizon declined CenturyLink’s request and stated that it could not issue the Billing Credit until CenturyLink had provided actual “agreement as to the credit amount.”⁸² Verizon made clear that it did not interpret CenturyLink’s PY2Q2 response as such an agreement and that the parties would need to “resolve the disputes prior to issuing the credit.”⁸³ Shortly thereafter, in light of Verizon’s position, CenturyLink relented and “clarifie[d] that it agrees to Verizon

⁷⁹ Verizon administered the Price Flex Deal by Plan Year and by Quarter, which the parties abbreviated as “PY_Q_.” For instance, PY2Q2 refers to the second quarter of Plan Year 2. Each Plan Year ran from March 1 to February 28. This litigation concerns four Plan Years: PY5 (under the 2009 Service Agreement) and PY1 – PY3 (under the 2014 Service Agreement). *See* Mason Decl. ¶ 8 & Tbl. 1 (providing a chart listing the dates for each Plan Year and quarter).

⁸⁰ CTL Ex. 46.03, at 1.

⁸¹ *Id.*

⁸² CTL Ex. 46.04, at 2.

⁸³ *Id.*

issuing a credit in the amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** – that is, the original amount that Verizon had proposed.⁸⁴ Verizon interpreted that clarification as a genuine concurrence and so issued the Billing Credit in the agreed-upon amount.⁸⁵

In the final six quarters (PY2Q3 – PY3Q4), CenturyLink continued to raise concerns about alleged “errors” in Verizon’s “unit” counts, and its initial response during these quarters was to withhold its agreement as to Verizon’s calculations.⁸⁶ But eventually, after an extended process including discussions with Verizon, CenturyLink provided a full concurrence for each of Verizon’s credit calculations.⁸⁷ Based on those concurrences, Verizon issued the Billing Credits in the amounts to which CenturyLink had agreed. It issued the final batch of credits (for Plan Year 3 of the 2014 Service Agreement) on February 16, 2018.⁸⁸

The Complaint challenges a total of 16 Billing Credits that Verizon issued over the span of four years. Verizon issued each of those credits after CenturyLink agreed to the amount.⁸⁹

⁸⁴ *Id.*

⁸⁵ *See* Mason Decl. ¶ 43.

⁸⁶ *See id.* ¶¶ 44-47.

⁸⁷ *See id.*

⁸⁸ *See id.* ¶ 47; VZ Ex. 71.

⁸⁹ *See* Credit History Chart at Step 6.

ARGUMENT

CenturyLink, as the complainant in this proceeding, bears the burden of proving that Verizon violated the Communications Act of 1934 (the “Act”).⁹⁰ To prevail, CenturyLink must show not only that Verizon’s practices were unlawful, but also that CenturyLink’s claims are procedurally proper.⁹¹ The Complaint fails on both counts. CenturyLink’s allegations are barred by the Service Agreements, and they fail to show that Verizon’s billing practices were unlawful.

I. THE SERVICE AGREEMENTS PRECLUDE CENTURYLINK’S CLAIMS

A. The Contracts Bar CenturyLink From Disputing The Billing Credits

CenturyLink’s claims fail at the threshold because they conflict with contract dispute provisions to which CenturyLink voluntarily agreed. In negotiating the Price Flex Deal, Verizon bargained for a “prohibition against disputes” that barred CenturyLink from disputing the way Verizon calculated the quarterly Billing Credits.⁹² The Service Agreements could not have been clearer on this issue: both provided that the “Billing Credits as determined by Verizon are not subject to dispute.”⁹³ The plain language of those provisions forecloses CenturyLink’s claims. CenturyLink retained the opportunity to disagree with Verizon’s calculations *before* Verizon

⁹⁰ See Memorandum Opinion and Order, *Hi-Tech Furnace Sys., Inc. v. Sprint Commc’ns Co.*, 14 FCC Rcd 8040, ¶ 10 (1999) (“It is well established that, in a formal complaint proceeding brought under section 208 of the Act, the complainant has the burden of proof to demonstrate that the carrier has violated the Act or Commission orders.”) (footnote omitted), *petition for review denied*, *Hi-Tech Furnace Sys., Inc. v. FCC*, 224 F.3d 781 (D.C. Cir. 2000).

⁹¹ See, e.g., Order on Reconsideration, *Saturn Telecomms. Servs., Inc. v. BellSouth Telecomms., Inc.*, 29 FCC Rcd 12520, ¶¶ 1-2 (2014) (“*Saturn Order*”) (affirming dismissal based on “settlement agreement” and “dispute resolution clause” barring claims), *petition for review denied*, *Saturn Telecomms. Servs., Inc. v. FCC*, 632 F. App’x 591 (11th Cir. 2016) (per curiam).

⁹² 2014 Service Agreement, Ex. B § 8(f); see Alston Decl. ¶¶ 8-12 (describing negotiations).

⁹³ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

issued a Billing Credit, and if CenturyLink had a dispute, it was entitled to withhold its concurrence until the issue was resolved.⁹⁴ But, once CenturyLink concurred in a credit amount and received payment, it relinquished any right to dispute that amount later.⁹⁵

The Bureau should enforce those contract provisions as written. The dispute clauses were a material part of the parties' bargain: Verizon gave CenturyLink discounted pricing well below CDP rates, and in return it received protection against after-the-fact disputes concerning the Billing Credits.⁹⁶ CenturyLink's claims – which have already embroiled Verizon in just the sort of costly litigation it bargained to avoid – upend that negotiated framework. Indeed, Verizon would not have agreed to the Price Flex Deal without the dispute-prohibiting contract language that CenturyLink now seeks to circumvent.⁹⁷ The Bureau should hold CenturyLink to that language and enforce the dispute-resolution framework the parties negotiated.⁹⁸

⁹⁴ See 2014 Service Agreement, Ex. B § 8(f) (“Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer.”); Mason Decl. ¶¶ 42-43.

⁹⁵ See 2009 Service Agreement, Ex. B § 7(e)(iii) (“Any amounts or Qualifying Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”); 2014 Service Agreement, Ex. B § 8(e) (same).

⁹⁶ See *supra* pp. 11-14; see also 2009 Service Agreement, Ex. B § 1 (CenturyLink “hereby agrees to abide by the requirements set forth [below]” “[i]n consideration for [Verizon’s] aggregate discounts and Billing Credits”); 2014 Service Agreement, Ex. B § 1 (same).

⁹⁷ See Alston Decl. ¶¶ 8-12.

⁹⁸ See Memorandum Opinion and Order, *Cox Virginia Telcom, Inc. v. Verizon South Inc.*, 17 FCC Rcd 8540, ¶¶ 30-31 (2002) (“*Cox Virginia*”) (holding that customer “waived its rate and NXX code objections to [carrier’s] bills” by failing to meet contract deadline requiring disputes to be raised “within 20-30 days of the challenged bill”); Memorandum Opinion and Order, *MAP Mobile Commc’ns, Inc. v. Illinois Bell Tel. Co.*, 24 FCC Rcd 5582, ¶ 18 (EB 2009) (dismissing complaint and noting that the Commission “should honor dispute resolution agreements” in negotiated contracts); *Frontier Commc’ns of the West, Inc. v. North Am. Long Distance Corp.*, No. 99-CV-0868E(M), 2001 WL 1397856, at *4 (W.D.N.Y. Oct. 24, 2001) (rejecting claims in intercarrier billing dispute where plaintiff failed to comply with the “clear and explicit terms” of contract’s “dispute resolution mechanism”).

The Service Agreements’ structure further confirms that the parties intended for the Billing Credits to be final and undisputable once paid. One of Verizon’s principal aims in negotiating the Billing Credit framework was to ensure that it could close its books for good on each quarter after issuing the credit.⁹⁹ To protect that interest, Verizon obtained an interlocking set of dispute provisions that insulated the Billing Credits from future adjustments. Thus, disputes of Verizon’s monthly charges were due within 30 days of each quarter’s end; disputed charges were irrevocably excluded from the credit calculations; and later adjustments to those charges (in either direction) could have no effect on the credit amounts.¹⁰⁰ Those provisions – all of which furthered Verizon’s goal of achieving certainty and finality – supplied the crucial “consideration for [Verizon’s] aggregate discounts and Billing Credits.”¹⁰¹ But they would have served little purpose if the Billing Credits themselves were subject to after-the-fact dispute.

CenturyLink tries to avoid these express contract terms by citing to other provisions,¹⁰² but those arguments fail and make little sense based on a plain reading of the contracts. The 2009 Service Agreement had a provision for “disputes raised after the determination of the Billing Credits,” but that provision refers to disputes concerning Verizon’s *monthly* recurring charges – not to after-the-fact attacks on Verizon’s credit calculations.¹⁰³ That is why the contract addressed those disputes together with “Disputed Charges,” which were monthly recurring charges subject to open dispute at the time of the quarterly credit calculations.¹⁰⁴ In

⁹⁹ See Alston Decl. ¶¶ 8-12.

¹⁰⁰ See *supra* pp. 11-14; Alston Decl. ¶¶ 10-12.

¹⁰¹ 2009 Service Agreement, Ex. B § 1; 2014 Service Agreement, Ex. B § 1.

¹⁰² Cf. CenturyLink’s Legal Analysis at 22-23.

¹⁰³ 2009 Service Agreement, Ex. B § 7(e)(v).

¹⁰⁴ See *id.* §§ 5(b), 7(e)(v).

both cases, the Service Agreements ensured that such monthly-charge disputes – however the parties resolved them – would remain separate from the flat-rate discount calculations and so could not lead to any “adjustment to the Billing Credits.”¹⁰⁵ In other words, although CenturyLink could dispute monthly charges, it could not dispute the Billing Credits themselves after Verizon had paid an agreed-upon credit amount.¹⁰⁶ Any other construction would nullify the provisions rendering the Billing Credits “not subject to dispute.”¹⁰⁷

Perhaps recognizing the difficulty of squaring its claims with the Service Agreements themselves, CenturyLink places great weight on the so-called “flexible dispute resolution mechanisms” in MSA Attachments 11 and 13.¹⁰⁸ Those Attachments established a separate dispute-resolution framework governing various matters arising under the MSA, such as the

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charge.¹⁰⁹ But CenturyLink’s claims do not concern such charges under the MSA; they concern Billing Credits under the Service Agreements.¹¹⁰

¹⁰⁵ *Id.* § 7(e)(v); *see* Alston Decl. ¶ 11 (explaining Verizon’s negotiating objective of insulating the credit calculations from disputes over monthly charges).

¹⁰⁶ *See* 2014 Service Agreement, Ex. B § 8(f). Although the “prohibition against disputes” did not “apply in a situation where Verizon applies a Billing Credit that does not match the mutually agreed upon credit amount,” *id.*, that exception does not help CenturyLink because CenturyLink concurred in all of the Billing Credits it now disputes. *See* Mason Decl. ¶¶ 30-32 & Tbl. 2.

¹⁰⁷ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f). *See also* 2009 Service Agreement, Ex. B § 7(e)(iii) (“Any amounts or Qualifying Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”); 2014 Service Agreement, Ex. B § 8(e) (same).

¹⁰⁸ CenturyLink’s Legal Analysis at 20.

¹⁰⁹ MSA Att. 13 § 9 (listing these and other non-tariffed charges and noting that [[BEGIN CONFIDENTIAL]]

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¹¹⁰ *See, e.g.*, Compl. ¶ 5 (alleging violation of “the service agreements and tariffs”).

Those Service Agreements, rather than MSA Attachments concerning packet-based products not at issue here, are controlling.¹¹¹

True, MSA Attachment 13 contemplated that the parties would **[[BEGIN CONFIDENTIAL]]** [REDACTED]
[REDACTED]¹¹² **[[END CONFIDENTIAL]]** But those procedures offer CenturyLink no help because nothing in them gave CenturyLink the right to dispute Billing Credits in which it had previously concurred.¹¹³ And, regardless of how Attachment 13 is construed, it cannot override the Service Agreements’ express command that the Billing Credits “are not subject to dispute.”¹¹⁴ That is true as a matter of both contract interpretation and tariff doctrine. As for contract interpretation, Attachment 13’s provisions are general – they lay out a broad procedural framework for resolving otherwise-proper disputes – and so must yield to the Service Agreements’ specific provisions barring CenturyLink from

¹¹¹ See 2009 Service Agreement § 6(h) (integration clause providing that the Service Agreement, the contract tariffs, and “all applicable Tariffs constitute the entire agreement between the parties”; omitting any mention of the MSA); 2014 Service Agreement § 6(h) (same). The MSA reflects the same understanding: its dispute provision applies only to amounts **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** MSA § 11.3 (emphasis added), which does not encompass special-access charges invoiced under the Service Agreements.

¹¹² MSA Att. 13 § 9.4; see MSA Att. 11 § 15 (similar); cf. CenturyLink’s Legal Analysis at 20-22 (invoking these provisions).

¹¹³ The provision CenturyLink cites – providing it was not **[[BEGIN CONFIDENTIAL]]** [REDACTED]

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¹¹⁴ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

disputing the Billing Credits in particular.¹¹⁵ As for tariff doctrine, customers cannot use private contracts to vary tariff requirements.¹¹⁶ The provisions barring CenturyLink's disputes appear in filed contract tariffs; the "flexible" MSA provisions CenturyLink cites do not.¹¹⁷ Under the filed-rate doctrine, CenturyLink cannot invoke the latter to escape the former.

The MSA itself supports the same conclusion. The MSA required both parties to

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CONFIDENTIAL]] Were CenturyLink correct that the MSA's dispute provisions govern its claims, therefore, the MSA would require the parties to litigate in New York courts.¹¹⁹

CenturyLink is able to sidestep that requirement here only because its claims arise under the Service Agreements, which contain no such forum-selection clause. Having skirted the MSA's

¹¹⁵ See *Cox Virginia* ¶ 30 (invoking rule that "specific contract language controls over more general contract language" and enforcing specific provisions restricting right to raise "billing disputes" over contract's more "general rule against waiver").

¹¹⁶ See, e.g., *AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 227 (1998) ("rights as defined by the tariff cannot be varied or enlarged by either contract or tort"); *Qwest Corp. v. AT&T Corp.*, 371 F. Supp. 2d 1250, 1251 (D. Colo. 2005) ("[T]he filed tariff doctrine prevents parties from contractually modifying tariffs.").

¹¹⁷ See CTL Ex. 17, Verizon FCC Tariff No. 1 § 21.66(H); CTL Ex. 18, Verizon FCC Tariff No. 11 § 32.66(H); CTL Ex. 19, Verizon FCC Tariff No. 14 § 21.35(H).

¹¹⁸ MSA § 6.1. The [[BEGIN CONFIDENTIAL]]

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¹¹⁹ See *Saturn Order* ¶ 23 ("[A] forum selection clause should be enforced absent a compelling reason not to do so."); *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 386 (2d Cir. 2007) ("A forum selection clause is viewed as mandatory when it confers exclusive jurisdiction on the designated forum or incorporates obligatory venue language.").

choice of forum to invoke the Commission’s jurisdiction, CenturyLink cannot now rely on the MSA to resurrect disputes that the Service Agreements foreclose.

B. CenturyLink’s Criticisms Of The Dispute Provisions Are Procedurally Barred And Wrong On The Merits

CenturyLink further attempts to evade the Service Agreements’ dispute provisions by arguing that Verizon’s administration of those provisions was unjust and unreasonable under § 201 of the Act.¹²⁰ None of CenturyLink’s arguments has merit. Not only are those arguments wrong on the merits and inconsistent with basic contract-tariff principles, but they are procedurally barred several times over. Accordingly, the Bureau should reject CenturyLink’s § 201 arguments and apply the Service Agreements as written.

1. CenturyLink Cannot Challenge The Dispute Provisions

At the outset, CenturyLink’s attacks on Verizon’s dispute process fail because CenturyLink has waived its right to challenge the terms of the Service Agreements. In both Agreements, CenturyLink agreed it would “not directly or indirectly participate in any action challenging one or more terms, conditions, rates, or provisions contained in this Agreement.”¹²¹ That no-suit clause is enforceable under New York law,¹²² which governs the Agreements.¹²³

¹²⁰ See CenturyLink’s Legal Analysis at 20-30 (citing 47 U.S.C. § 201).

¹²¹ 2009 Service Agreement § 3(d)(ii); 2014 Service Agreement § 3(d)(ii).

¹²² See *Kamfar v. New World Rest. Grp., Inc.*, 347 F. Supp. 2d 38, 50 (S.D.N.Y. 2004) (“Covenants not to sue, requiring that the obligor forbear from bringing any current or future claims against the obligee, are valid in New York.”).

¹²³ See 2009 Service Agreement § 6(b) (“This Agreement shall be construed in accordance with the laws of the State of New York, without reference to conflict of laws principles.”); 2014 Service Agreement § 6(b) (same). The choice-of-law clause and the no-suit clause appeared in the part of the Service Agreements that was not included in the filed contract tariffs.

It is also enforceable under the Act.¹²⁴ As the Commission has explained, a negotiated contract provision waiving a party’s right to “attack[] the lawfulness of [an] Agreement” is a “standard provision to forego litigation” that bars a party from asserting § 201 claims (even those that are otherwise meritorious) challenging the terms of such an agreement.¹²⁵ That conclusion applies here. In exchange for Verizon’s provision of discounted special-access pricing, CenturyLink “expressly and deliberately waived its right” to assert that the Service Agreements’ dispute clauses “violate[] the Act.”¹²⁶ That waiver should be enforced.

Similarly, CenturyLink previously represented to the Bureau that it would “not allege that the tariffs, contract tariffs, or agreements between the parties at issue in this proceeding are themselves unlawful.”¹²⁷ CenturyLink made that representation in part so it could assert that the “five-month deadline in 47 U.S.C. § 208(b)(1)” does not apply to this case.¹²⁸ Staff then relied on that representation in setting the initial schedule for this proceeding.¹²⁹ Having obtained

¹²⁴ See Memorandum Opinion and Order, *Exchange Network Facilities for Internet Access*, 1 FCC Rcd 618, ¶¶ 54 & n.33, 72-74 (1986) (“*ENFIA Order*”) (enforcing a no-suit clause providing that contract parties “will not attack or challenge this Interim Settlement Agreement or the lawfulness thereof”); see also Memorandum Opinion and Order, *Nova Cellular West, Inc. v. AirTouch Cellular*, 17 FCC Rcd 15026, ¶ 16 (2002) (“*Nova Cellular*”) (enforcing contract provision in which complainant “expressly and deliberately waived its right to assert that [defendant’s] conduct regarding the provisioning of electronic billing tapes violates the Act”).

¹²⁵ *ENFIA Order* ¶¶ 73-74 (holding that, “even if it could be established that the ENFIA rates were unlawful and that the signatory [common carriers] suffered actual damage, neither the signatory [common carriers] nor the signatory telephone companies” could pursue such claims).

¹²⁶ *Nova Cellular* ¶ 16.

¹²⁷ Letter from Marc S. Martin & Brendon P. Fowler, Counsel for CenturyLink, and Curtis L. Groves, Counsel for Verizon, to Ms. Sandra Gray-Fields, Market Disputes Resolution Division, FCC, at 2 (Feb. 5, 2018).

¹²⁸ *Id.*

¹²⁹ See Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, FCC, to Brendon P. Fowler, Counsel for CenturyLink, and Curtis L. Groves, Counsel for Verizon, at 3 (Feb. 9, 2018) (“we note that the waiver request asserts that [CenturyLink] will

procedural rulings based in part on a commitment not to challenge the Service Agreements, CenturyLink should be held to its commitment.¹³⁰ Accordingly, to the extent CenturyLink’s arguments suggest that the Service Agreements are unjust and unreasonable, or that they should be set aside for any other reason, the Bureau should reject those arguments out of hand.

Recognizing that problem, CenturyLink attempts to cloak its § 201 arguments as attacks on Verizon’s conduct rather than as challenges to the contract provisions themselves. Specifically, CenturyLink asserts that its claims should proceed because Verizon “obstructed CenturyLink’s ability to dispute Verizon’s calculations of the credits.”¹³¹ But the real “obstruction” CenturyLink identifies is not Verizon’s conduct; it is the contracts CenturyLink signed. Indeed, all of the things about which CenturyLink complains – the “dispute mechanism” with which it did not comply, the quality of the periodic “information” it received, and the “short time period” it had “to dispute the credits”¹³² – were a direct function of the Service Agreements themselves. Because there is no real question that Verizon’s dispute process complied with the text of those Agreements, CenturyLink’s attack on the former is really just a challenge to the latter. CenturyLink is precluded from making such arguments, no matter how it styles them.

CenturyLink’s lengthy discussion of “the purposes of Section 415” illustrates the point.¹³³ In discussing § 415, CenturyLink repeatedly insinuates that it has a substantive right to

not allege in its formal complaint that the tariffs, contract tariffs, or agreements between the parties at issue in this proceeding are themselves unlawful”).

¹³⁰ See *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (holding that, under the doctrine of “judicial estoppel,” a party may not “prevail[] in one phase of a case on an argument and then rely[] on a contradictory argument to prevail in another phase”).

¹³¹ CenturyLink’s Legal Analysis at 14.

¹³² *Id.* at 15.

¹³³ *Id.* at 24-27; see *id.* at 17 (discussing “the purpose behind Section 415”).

a “reasonable period in which to seek relief from overcharges.”¹³⁴ It further cites cases invalidating certain types of unilateral tariff provisions that restrict customers’ rights to raise disputes.¹³⁵ The underlying theme – which runs throughout CenturyLink’s Legal Analysis – is that Verizon cannot invoke the Service Agreements to deprive CenturyLink of a so-called “reasonable” dispute window. But such assertions (even if they had merit) are precisely the type of argument that CenturyLink cannot make. Because CenturyLink has bargained away its right to claim that the Service Agreements deprived it of a so-called “reasonable period” in which to bring disputes, the only question the Bureau need resolve in this case is whether Verizon’s dispute process complied with the letter of the Service Agreements and contract tariffs.¹³⁶ Once the Bureau concludes that it did, the rest of CenturyLink’s § 201 claims are foreclosed.

2. CenturyLink’s “Catch 22” Argument Is Factually And Legally Incorrect

Even if CenturyLink’s dispute-related claims were procedurally proper, they would fail on the merits. CenturyLink’s core argument is that Verizon placed it in a “Catch-22” that made

¹³⁴ *Id.* at 25.

¹³⁵ See Declaratory Ruling, *AT&T Co. Petition To Rectify Terms and Conditions of 1985 Annual Access Tariffs*, 3 FCC Rcd 5071, ¶ 19 (CCB 1988) (“*AT&T Declaratory Ruling*”) (“[W]e find unreasonable any requirement that an [interexchange carrier] dispute an access bill by the payment due date to preserve the right to penalty interest on overpayments.”); *Great Lakes Commc’n Corp. v. AT&T Corp.*, No. C13-4117-DEC, 2014 WL 2866474, at *24 (N.D. Iowa June 24, 2014) (invalidating tariff provision requiring customers “to pay all charges as a condition of disputing them”), *report and recommendation adopted in part*, No. C13-4117-DEC, 2015 WL 897976 (N.D. Iowa Mar. 3, 2015). These cases are also inapposite here because they concern tariffs imposed unilaterally by a carrier, rather than contract tariffs negotiated by a customer. See *infra* Part I.B.2.c.

¹³⁶ See *Nova Cellular* ¶¶ 16-25; *ENFIA Order* ¶¶ 72-74.

it functionally impossible for CenturyLink to dispute the Billing Credits.¹³⁷ CenturyLink’s argument is incorrect on both the facts and the law.

a. CenturyLink gave informed consent to Verizon’s credit calculations

The Service Agreements were just and reasonable because they provided CenturyLink with ample opportunity to evaluate and disagree with Verizon’s quarterly credit calculations. At all times, Verizon’s practice was to issue a Billing Credit only after CenturyLink had expressly agreed to the credit amount.¹³⁸ If CenturyLink had disagreements, therefore, it was free to raise them during the concurrence process – as it sometimes did.¹³⁹ For the first 25 quarters of the Price Flex Deal, CenturyLink conveyed its unqualified agreement with Verizon’s proposed credit calculations.¹⁴⁰ And, in all 32 quarters of the Price Flex Deal, CenturyLink ultimately agreed to the credit amount before Verizon issued the Billing Credit.¹⁴¹

CenturyLink’s suggestion that it lacked enough information to give informed consent to the Billing Credits is unpersuasive for at least three reasons.¹⁴² *First*, the “flat rates” at the core of the Service Agreements were predicated on the very unit-counting methodology CenturyLink now disputes. The flat rates in the contracts were only as low as they were because Verizon counted “units” the way that it did; had the parties instead counted in the way CenturyLink now

¹³⁷ Compl. ¶¶ 73, 77; *see also, e.g.*, CenturyLink’s Legal Analysis at 23.

¹³⁸ *See supra* pp. 14-16.

¹³⁹ *See* Mason Decl. ¶ 27; Szol Decl. ¶ 11; CTL Ex. 45.02, at 1-2 (CenturyLink raising, and Verizon correcting, “formula error” concerning cell “E78 on the April tab” of spreadsheet).

¹⁴⁰ *See* Mason Decl. ¶ 42; Credit History Chart at PY5Q1 – PY2Q1.

¹⁴¹ *See* Mason Decl. ¶¶ 30-32 & Tbl. 2.

¹⁴² *Cf.* CenturyLink’s Legal Analysis at 17-24.

advocates, the rates would have been higher.¹⁴³ For that reason, CenturyLink did not need any particular quarterly report to understand how Verizon was counting “units.” It was on notice of (and benefited from) that counting methodology at the very inception of the Price Flex Deal.¹⁴⁴

Second, Verizon provided CenturyLink each quarter with extensive reporting about the Billing Credits. The reporting included courtesy Monthly Tracking Reports that provided CenturyLink with a running tally of Verizon’s proposed credit amount – including its “unit” counts – for each month. From those reports, which Verizon sent shortly after the end of each month, CenturyLink could have evaluated Verizon’s “unit” count on a monthly basis.¹⁴⁵

CenturyLink asserts that those Monthly Tracking Reports were insufficient because they typically lacked circuit-level detail.¹⁴⁶ But that ignores the monthly invoices CenturyLink received separately at the beginning of each billing cycle, which contained exhaustive circuit-level detail about every special-access circuit for which Verizon was billing. CenturyLink could have taken those invoices, developed its own count of the number of eligible “units,” and then compared its own figure to the count in Verizon’s Monthly Tracking Reports. In fact, CenturyLink appears to have done precisely that in generating the DS1 disputes in its

¹⁴³ See Mason Decl. ¶¶ 96-101; Alston Decl. ¶¶ 26-31.

¹⁴⁴ See Memorandum Opinion and Order, *Ryder Commc’ns, Inc. v. AT&T Corp.*, 18 FCC Rcd 13603, ¶ 27 (2003) (“*Ryder Order*”) (enforcing contract-tariff restrictions where complainant “could have foreseen, and thus sought to address differently in the agreements, the very circumstances that allegedly occurred here”); Memorandum Opinion and Order, *Kiefer v. Paging Network, Inc.*, 16 FCC Rcd 19129, ¶¶ 9-10 (2001) (“*Kiefer v. Paging Network*”) (declining to find contract “billing period” to be “unreasonably short” where complainant was “given notice” of the “billing policy, and agreed in writing to [that policy in] the subscription agreement”).

¹⁴⁵ See Mason Decl. ¶¶ 25-26.

¹⁴⁶ See, e.g., Compl. ¶¶ 72-75; CenturyLink’s Legal Analysis at 18 n.56.

Complaint.¹⁴⁷ The same technique would have allowed CenturyLink to analyze Verizon’s credit calculations at any time, with or without the “circuit level detail” it says was necessary. And if CenturyLink ever wanted circuit-level detail earlier in a quarter, all it had to do was ask; Verizon would have happily provided such detail on request.¹⁴⁸ Verizon is not responsible for CenturyLink’s failure to request the circuit-level information it now claims it needed.¹⁴⁹

Third, Verizon did provide CenturyLink circuit-level detail underpinning its calculation of the quarterly Billing Credits. Verizon typically sent such reports after the end of each quarter, along with its final proposed credit amount. Verizon’s reports included detailed information – including circuit ID and Class of Service – about every DS3 circuit it had counted as a “unit” for purposes of the Billing Credit.¹⁵⁰ CenturyLink used these reports to “confirm the unit numbers” on which Verizon’s credit calculations rested.¹⁵¹ CenturyLink now concedes that such detail allowed it to fully evaluate the Billing Credits.¹⁵²

¹⁴⁷ See, e.g., CTL Ex. 32 Tab “Detail,” Row 3725 (disputing DS1 circuits for which “Circuit ID” is “UNKNOWN”); Mason Decl. ¶ 29.

¹⁴⁸ See Mason Decl. ¶ 12 (giving example where CenturyLink asked for – and Verizon provided – circuit-level data alongside earlier Monthly Tracking Report).

¹⁴⁹ See Memorandum Opinion and Order, *Communications Vending Corp. of Arizona, Inc. v. Citizens Commc’ns Co.*, 17 FCC Rcd 24201, ¶ 59 (2002) (declining to excuse violation of deadline where complainants “did not act with anything approaching due diligence”), *aff’d*, *Communications Vending Corp. of Arizona, Inc. v. FCC*, 365 F.3d 1064 (D.C. Cir. 2004); Memorandum Opinion and Order, *Qwest Commc’ns Co. v. Budget Prepay, Inc.*, 28 FCC Rcd 5170, ¶ 10 (EB 2013) (rejecting claims as time-barred where complainant failed “to make a diligent inquiry into the facts and circumstances that would support the claim”).

¹⁵⁰ See Mason Decl. ¶¶ 15-20 (describing quarterly reporting package).

¹⁵¹ E.g., CTL Ex. 37.04.

¹⁵² See, e.g., Declaration of Tiffany Brown ¶ 59 (“Brown Decl.”) (conceding that quarterly reports with “circuit level detail” were sufficient for CenturyLink “to determine whether DS1s without mileage and DS3 circuits were being appropriately accounted for in the quarterly billing credits”).

Each of the issues that CenturyLink now identifies was apparent from the face of those quarterly reports.¹⁵³ For instance, CenturyLink asserts that Verizon erroneously “double counted” meet-point circuits as multiple “units.” But to take PY1Q2 as an example, Verizon sent CenturyLink a DS3 circuit-level detail report on December 18, 2014, stating plainly – in two consecutive rows of the same spreadsheet – that it was counting the meet-point circuit 101 T3 BSHPCAXG LSANCA11W33 as two separate “units,” one for each of the two separate BANs on which the circuit was billed.¹⁵⁴ Four days later, while in possession of this information, CenturyLink fully concurred in Verizon’s credit calculations.¹⁵⁵ That example demonstrates a broader truth: CenturyLink had ample advance notice of the billing errors it now alleges, yet it agreed with Verizon’s calculations anyway. Holding CenturyLink to those concurrences is not unjust and unreasonable; it effectuates the bargain the parties voluntarily negotiated.¹⁵⁶

b. CenturyLink’s arguments about the 30-day deadline lack merit

CenturyLink next argues that Verizon’s dispute process was unreasonable because it supposedly prevented CenturyLink from disputing Verizon’s credit calculations within 30 days of the end of a quarter.¹⁵⁷ That argument attacks a straw man. Verizon does not contend that CenturyLink was precluded from disputing its proposed credit calculations after the passage of 30 days. Instead, the 30-day deadline applied to business-as-usual disputes of Verizon’s *monthly charges*; its purpose was to allow enough time for the parties to tally the open-dispute amounts

¹⁵³ See Mason Decl. ¶¶ 35-41 (explaining this principle as to each of the dispute categories).

¹⁵⁴ See *id.* ¶ 37 (citing CTL Ex. 42.05d Tab “CLS CLF DETAIL,” Rows 121-122).

¹⁵⁵ See *id.* (citing CTL Ex. 42.06).

¹⁵⁶ See *Ryder Order* ¶ 24 (holding claims precluded under “Billing Agreement” and refusing to “rewrite” contract tariff to ameliorate the “allegedly harsh results of the parties’ deal”).

¹⁵⁷ See, e.g., CenturyLink’s Legal Analysis at 22-24.

and deduct them from the Billing Credits.¹⁵⁸ The Billing Credits themselves, by contrast, were subject to a different process. CenturyLink retained the opportunity to dispute Verizon’s credit calculations at any time before it agreed with them, and Verizon could not pay a credit “until the applicable credit amount [wa]s agreed to by [CenturyLink].”¹⁵⁹ But once CenturyLink provided agreement and Verizon issued a Billing Credit in the agreed-upon amount, that Billing Credit simply was “not subject to dispute.”¹⁶⁰ That latter “prohibition against disputes”¹⁶¹ – not the 30-day provision on which CenturyLink focuses – controls the outcome of this case.

True, Verizon also has invoked the 30-day deadline as an additional obstacle to CenturyLink’s claims.¹⁶² That is because several of CenturyLink’s claims – in particular, the ones in Categories Five and Six – are actually disputes of Verizon’s monthly charges (whether CenturyLink was properly billed for a circuit on its monthly invoice) rather than its calculation of the Billing Credits *per se* (whether Verizon correctly calculated the credit amount).¹⁶³ Such disputes are properly subject to the Service Agreements’ 30-day deadline and should be dismissed for that reason.¹⁶⁴ But that poses no unfairness for CenturyLink: for such disputes, where CenturyLink’s real issue was with the way Verizon billed for a circuit on its monthly invoices, it should have disputed those charges based on the monthly invoices alone. And because CenturyLink did not need any information about the Billing Credits to raise such

¹⁵⁸ See 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a); see also Alston Decl. ¶¶ 8-12 (describing purpose of those provisions); Mason Decl. ¶¶ 13-14.

¹⁵⁹ 2014 Service Agreement, Ex. B § 8(f); see Mason Decl. ¶ 42.

¹⁶⁰ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

¹⁶¹ 2014 Service Agreement, Ex. B § 8(f).

¹⁶² See, e.g., CTL Exs. 40.23, 46.04.

¹⁶³ See Compl. ¶¶ 60-69.

¹⁶⁴ See *infra* Parts II.E-F.

disputes, it readily could have complied with the 30-day deadline in doing so.¹⁶⁵ Once CenturyLink missed that deadline, however, such monthly charges became immune from “any claims or disputes by Customer at any time in the future.”¹⁶⁶

Even though there was no 30-day deadline to dispute the Billing Credits, Verizon nevertheless provided CenturyLink with enough information to dispute the Billing Credits within 30 days of the end of each quarter. Although CenturyLink did not always have full circuit-level detail within that timeframe, it did always have complete monthly invoices and several Monthly Tracking Reports.¹⁶⁷ As noted above, those documents alone should have alerted CenturyLink to the errors it now alleges. That is particularly true because CenturyLink’s disputes, by its own admission, concern “the same circuits” allegedly “counted in error quarter after quarter over the course of years.”¹⁶⁸ Once CenturyLink decided that Verizon was “chronically over-count[ing]” the same circuits every quarter,¹⁶⁹ it could have adopted a practice of disputing those circuits within 30 days of the end of each quarter if it desired.

CenturyLink’s criticisms of Verizon’s electronic dispute system are similarly unfounded.¹⁷⁰ Verizon’s system automatically rejected most of CenturyLink’s claims because CenturyLink made errors in filling out Verizon’s standard claim form.¹⁷¹ But those mistakes do

¹⁶⁵ See Mason Decl. ¶¶ 93-94; Szol Decl. ¶¶ 10-13.

¹⁶⁶ 2009 Service Agreement, Ex. B § 7(e)(iii); 2014 Service Agreement, Ex. B § 8(e).

¹⁶⁷ See Mason Decl. ¶¶ 11-12, 25-26.

¹⁶⁸ Compl. ¶ 107.

¹⁶⁹ *Id.* ¶ 37.

¹⁷⁰ *Cf. id.* ¶¶ 71-77.

¹⁷¹ See Szol Decl. ¶¶ 13, 19-20, 22, 24, 37, 39-41, 43-45. Contrary to CenturyLink’s suggestion, see Brown Decl. ¶ 63, the error was not the lack of a bill date for the Billing Credits; it was that CenturyLink kept writing in a BAN in the part of the claim form that required a circuit ID. See Szol Decl. ¶ 13. CenturyLink could have easily fixed that error.

not show any structural unfairness in Verizon’s process: CenturyLink could have filled out the claim form to avoid an automatic denial; it could have sought Verizon’s assistance in steering its disputes through the system; or it could have sent its disputes directly to Verizon’s dispute team (thus bypassing the electronic system altogether).¹⁷² In fact, CenturyLink eventually succeeded (with Verizon’s assistance) in submitting its first batch of claims, which Verizon held “open” until it investigated and conveyed a substantive response.¹⁷³ As Verizon then indicated, CenturyLink’s claims were denied because CenturyLink had “agreed to the credits throughout the plan.”¹⁷⁴ CenturyLink’s success in obtaining that substantive response to its claims (albeit one with which it disagreed) refutes its assertion that filing a proper dispute was “impossible.”¹⁷⁵

Verizon went on to deny CenturyLink’s subsequent claims for a variety of reasons. Many were rejected automatically by Verizon’s system; some were denied when CenturyLink’s consultant failed to supply the follow-up information she had promised; and some made it through the system and were denied on the merits.¹⁷⁶ In each instance, Verizon believed that it had resolved this matter on September 15, 2014, when it conveyed its “final” substantive response on CenturyLink’s first batch of disputes.¹⁷⁷ Along the way, CenturyLink continued to fill out Verizon’s claim form incorrectly – thus eliciting automated rejection notices from

¹⁷² *See id.* ¶¶ 21, 23, 25 (describing reason that several of CenturyLink’s claims passed through Verizon’s electronic system before being denied by an analyst).

¹⁷³ *See id.* ¶¶ 27-29; CTL Ex. 40.01, at 2.

¹⁷⁴ CTL Ex. 40.03, at 3.

¹⁷⁵ *Cf.* Compl. ¶ 76.

¹⁷⁶ *See* Dispute History Chart (surveying Verizon’s disposition of CenturyLink’s claims).

¹⁷⁷ Szol Decl. ¶ 29.

Verizon’s system – but that is not why its claims were denied.¹⁷⁸ As Verizon explained in a detailed letter it sent to CenturyLink in March 2016, CenturyLink’s “disputes have been thoroughly reviewed by Verizon and are denied” because they conflict with “the Service Agreement and associated Contract Tariffs.”¹⁷⁹

Ultimately, the difficulty CenturyLink experienced with Verizon’s electronic system is a red herring. Even if every one of CenturyLink’s disputes had made it through that system, they would have remained denied because, once paid, the “Billing Credits as determined by Verizon are not subject to dispute.”¹⁸⁰ That CenturyLink tried and failed to dispute those credits through Verizon’s electronic system does not demonstrate any violation of the Act.

c. CenturyLink’s policy arguments conflict with the *Mobile-Sierra* doctrine

CenturyLink’s policy arguments about “fairness and customer equity” or the “purposes of Section 415” (to the extent they are even properly before the Commission) are similarly flawed.¹⁸¹ Whatever salience those arguments might have in an ordinary case, they must give way here to the contract CenturyLink voluntarily executed.¹⁸² The *Ryder Order* makes that clear. There, the Commission held that contract tariffs are subject to the principles underlying

¹⁷⁸ See *id.* ¶¶ 10-13 (explaining how CenturyLink could and should have filled out a claim form with the information it had).

¹⁷⁹ CTL Ex. 40.23, at 1.

¹⁸⁰ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

¹⁸¹ CenturyLink’s Legal Analysis at 15, 24-29.

¹⁸² See *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 611 (2013) (“statutes of limitations provide only a default rule that permits parties to choose a shorter limitations period”); *MFS Int’l, Inc. v. International Telecom Ltd.*, 50 F. Supp. 2d 517, 523 (E.D. Va. 1999) (enforcing a contract “shortening the limitations period” under the Act); see also *Ryder Order* ¶ 24 (explaining importance of enforcing restrictions contained in contract tariffs, even if they lead to “allegedly harsh results”).

the *Mobile-Sierra* doctrine,¹⁸³ under which a contract tariff (unlike a unilateral tariff) may be set aside “only if there exists a compelling public interest in doing so.”¹⁸⁴ Under the *Mobile-Sierra* doctrine, the “‘threshold’” for showing a compelling interest is “‘much higher than the threshold for demonstrating unreasonable conduct under Sections 201(b) and 202(a) of the Act.’”¹⁸⁵ That is because “the long-term health of the communications market depends on the certainty and stability that stems from the predictable performance and enforcement of contracts.”¹⁸⁶ Indeed, allowing a customer to attack a contract tariff with a garden-variety § 201 claim would “contravene the strong public interest in preserving the sanctity of contracts.”¹⁸⁷

Those principles apply with particular force to CenturyLink’s claims. CenturyLink’s position, as in the *Ryder Order*, threatens to upset an “integral part of the quid pro quo bargain” the parties struck.¹⁸⁸ The Service Agreements reflected a negotiated compromise in which Verizon traded away some things and received some things in return. Among them, Verizon traded away greater discounts and obtained protection against disputes.¹⁸⁹ Verizon’s core

¹⁸³ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

¹⁸⁴ *Ryder Order* ¶ 24 & n.78. Applying the *Mobile-Sierra* doctrine to contract tariffs is consistent with the filed-rate doctrine. See *Global Access Ltd. v. AT&T Corp.*, 978 F. Supp. 1068, 1073-74 (S.D. Fla. 1997).

¹⁸⁵ *Ryder Order* ¶ 24 & n.79 (quoting Memorandum Opinion and Order, *IDB Mobile Commc’ns, Inc. v. COMSAT Corp.*, 16 FCC Rcd 11474, ¶ 15 (2001)); see *Morgan Stanley Capital Grp. Inc. v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 550 (2008) (holding, under the *Mobile-Sierra* doctrine, that “setting aside” contract terms “requires a finding of unequivocal public necessity”).

¹⁸⁶ *Ryder Order* ¶ 24.

¹⁸⁷ *Id.* ¶ 28.

¹⁸⁸ *Id.*

¹⁸⁹ Compare Alston Decl. ¶¶ 8-14 (describing exchange of discounted pricing for dispute protections) with *Ryder Order* ¶ 25 (enforcing “early service termination provision [that] was a quid pro quo for the reduced rates that [complainant] had achieved through hard bargaining”); see also Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section*

objective was finality: if it was going to agree to steeper discounts than what was available under CDP, it wanted the ability to close the books on each quarter after paying the agreed-upon Billing Credit.¹⁹⁰ But CenturyLink’s policy arguments – seeking to keep its discounted pricing while also adding the right to dispute Billing Credits two years after the fact – would deprive Verizon of the benefit of its bargain. The Bureau should reject those arguments because they undermine one of the “principal components of the exchange for reduced rates.”¹⁹¹

None of CenturyLink’s § 201 arguments demonstrates a “compelling public interest” in overturning that negotiated arrangement.¹⁹² CenturyLink asserts (incorrectly) that it lacked “sufficient time to analyze the quarterly statements” for “disputed amounts,”¹⁹³ but even if that were true, it would merely reflect the deal to which all sides agreed. The 30-day deadline that CenturyLink so intensely criticizes appears on the face of the contracts it voluntarily signed¹⁹⁴ – as does the “prohibition against disputes” that bars its claims.¹⁹⁵ If CenturyLink wanted a longer

252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, 17 FCC Rcd 27039, ¶ 348 (WCB 2002) (“*WorldCom Petition Order*”) (refusing to “nullify . . . contractual arrangements” where “AT&T voluntarily purchased special access services pursuant to Verizon’s filed tariff and took advantage of discount pricing plans that offered lower rates in return for a longer term commitment”).

¹⁹⁰ See Alston Decl. ¶¶ 8-12. For that reason, CenturyLink is incorrect (Legal Analysis at 27) that “there is no apportioned risk that CenturyLink assumed and is now seeking escape.” The Service Agreements purposefully allocated to CenturyLink the risk of errors concerning Billing Credits with which it had concurred. See Alston Decl. ¶¶ 8-12. By disputing such issues now, CenturyLink is in fact “attempting to evade a provision that was central to the cost structure of the agreement.” CenturyLink’s Legal Analysis at 26 (addressing the *Ryder Order*).

¹⁹¹ *Ryder Order* ¶ 28; see *WorldCom Petition Order* ¶ 348.

¹⁹² *Ryder Order* ¶ 24.

¹⁹³ CenturyLink’s Legal Analysis at 28.

¹⁹⁴ See 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a).

¹⁹⁵ 2014 Service Agreement, Ex. B § 8(f).

window in which to raise disputes of monthly charges, it could have negotiated for one.¹⁹⁶ In fact, the parties renegotiated the Service Agreement in 2014, by which point CenturyLink had five years of experience with how Verizon was administering the deal. Rather than seek additional rights to raise disputes, however, CenturyLink focused on obtaining a larger discount.¹⁹⁷ The public interest cuts strongly against allowing CenturyLink to “shirk its contractual commitments and to deprive [Verizon] of the benefit of its bargain.”¹⁹⁸

The cases CenturyLink cites do not hold otherwise.¹⁹⁹ Those cases concern *unilateral* tariffs and hold merely that carriers may not unilaterally deprive customers of a reasonable time period in which to raise disputes.²⁰⁰ That holding rests on the premise that traditional “tariffs are unilaterally imposed” and so do not implicate “contractual principles that permit the shortening of a statute of limitations.”²⁰¹ Contract tariffs are different. A contract tariff, unlike a unilateral tariff, reflects a negotiated agreement and may be set aside only upon a showing of a

¹⁹⁶ See *Ryder Order* ¶ 27 (rejecting § 201 challenge to contract tariff where complainant “could have foreseen, and thus sought to address differently in the agreements, the very circumstances that allegedly occurred here”).

¹⁹⁷ Compare 2009 Service Agreement, Ex. B § 7(e), with 2014 Service Agreement, Ex. B § 8; see also Alston Decl. ¶¶ 16-18 & Tbls. 1-2 (comparing flat-rate discounts between two agreements).

¹⁹⁸ *Ryder Order* ¶ 30.

¹⁹⁹ Cf. CenturyLink’s Legal Analysis at 24-26.

²⁰⁰ See *Great Lakes*, 2014 WL 2866474, at *24-25 (discussing unilateral tariff’s “requirement of prepayment as a condition of disputing [access] charges”); *AT&T Declaratory Ruling* ¶¶ 17-19 (discussing unilateral tariff requirements that customers “dispute an access bill by the payment due date to preserve the right to penalty interest”). The *AT&T Declaratory Ruling* is also inapposite because it addressed billing practices in the 1980s, when bills were sent by “mail” and “a significant portion of the billing cycle [wa]s absorbed in preparing and transporting bills and payments.” *Id.* ¶ 19 n.48. Here, by contrast, CenturyLink received electronic bills instantaneously into its state-of-the-art analysis system and had more than enough time to analyze Verizon’s charges. See Mason Decl. ¶ 26.

²⁰¹ *Northern Valley Commc’ns, LLC v. FCC*, 717 F.3d 1017, 1019 (D.C. Cir. 2013).

“compelling public interest.”²⁰² Verizon is aware of no case in which the Commission has invalidated a contract tariff under § 201, and CenturyLink cites none. In fact, the Commission routinely enforces dispute and billing clauses in private contracts that likely would be unlawful in the context of a unilateral tariff.²⁰³ CenturyLink’s unilateral-tariff cases therefore provide no reason to disturb the Service Agreements’ negotiated dispute framework.

3. Verizon Properly Declined To Issue Disputed Credit Amounts

CenturyLink further criticizes Verizon for supposedly “bully[ing] CenturyLink into ‘concurring’ with Verizon’s calculations.”²⁰⁴ That criticism is unfounded. CenturyLink’s argument concerns the Price Flex Deal’s final seven quarters (PY2Q2 – PY3Q4) in which CenturyLink’s initial response to Verizon’s proposed Billing Credits was to “agree” with Verizon’s proposed Billing Credit while simultaneously identifying alleged “errors” in the calculations.²⁰⁵ CenturyLink asked Verizon immediately to pay the amount originally proposed – something CenturyLink called the “undisputed amount” – while indicating it would file disputes over additional amounts concerning the “errors” it asserted.²⁰⁶ Verizon refused and

²⁰² *Ryder Order* ¶ 24.

²⁰³ *See, e.g., Cox Virginia* ¶ 30 (enforcing provision in interconnection agreement requiring customer to “notify [carrier] in writing regarding the nature and the basis” of its disputes “within 20-30 days of the challenged bill” or else waive its disputes); *Kiefer v. Paging Network* ¶ 10 (enforcing contractual late fee under § 201 based on a “10-day billing period” with a “10-13 day grace period before a late fee is assessed”).

²⁰⁴ CenturyLink’s Legal Analysis at 29.

²⁰⁵ *E.g., CTL Ex. 46.03*, at 1; *see supra* pp. 18-19.

²⁰⁶ *See supra* pp. 18-19.

stated it would pay the Billing Credit only once CenturyLink agreed to the entire amount.²⁰⁷

CenturyLink now claims that was “clear coercion” in violation of the Act.²⁰⁸

Verizon properly rejected CenturyLink’s attempt to offer only partial agreement to the Billing Credits owed in these quarters. The 2014 Service Agreement was unambiguous on this issue: it stated that “Verizon will not issue *any* Billing Credits until the applicable credit amount is agreed to by Customer.”²⁰⁹ When CenturyLink responded to Verizon’s proposed Billing Credits by demanding additional amounts on top of what Verizon had proposed, it was not “agree[ing] to” the “applicable credit amount”; it was claiming that Verizon’s amount was too low. Verizon correctly understood that such responses did not authorize payment of the Billing Credits under the 2014 Service Agreement.²¹⁰

CenturyLink’s attempt to avoid that conclusion by breaking the Billing Credits into pieces lacks merit. Although CenturyLink acknowledges that it asserted “errors” in Verizon’s calculations during these seven quarters, it maintains that the originally proposed amount was “undisputed” and so should have been paid immediately while the parties worked out their disputes over the additional amounts.²¹¹ That attempt to bifurcate each quarterly Billing Credit conflicts with the text and purpose of the 2014 Service Agreement. As for text, the Service Agreement required Verizon to pay a singular “net Billing Credit for each Quarter.”²¹²

²⁰⁷ See Mason Decl. ¶¶ 42-51 (describing communications in PY2Q2 – PY3Q4).

²⁰⁸ See CenturyLink’s Legal Analysis at 29; Compl. ¶¶ 94-99.

²⁰⁹ 2014 Service Agreement, Ex. B § 8(f) (emphasis added). Because this issue arose for the first time in PY2Q2, the 2014 Service Agreement alone was controlling.

²¹⁰ See Mason Decl. ¶ 49.

²¹¹ E.g., Compl. ¶¶ 94-95.

²¹² 2014 Service Agreement, Ex. B § 7(g).

CenturyLink’s request that Verizon pay *multiple* credit amounts each quarter – one immediately, one after resolving its disputes – cannot be squared with that requirement.

As for purpose, CenturyLink’s bifurcated approach – asking Verizon to pay a large Billing Credit while also holding the books open to accommodate a possible future payment – risked the very sort of billing uncertainty Verizon had bargained to avoid. For one thing, it would have robbed Verizon of the ability to close the books on each quarter after issuing the Billing Credit.²¹³ That would have created uncertainty not just under the Price Flex Deal, but under the MSA as well – which required several other surcharge calculations that depended in part on the number of special-access “units” that Verizon billed.²¹⁴ For another, CenturyLink’s position incorrectly presumed independence between the so-called “undisputed credits” (which it wanted immediately) and the “amounts in dispute” (which it wanted to resolve later). In fact, those amounts were functionally intertwined, which made it practically unworkable to separate them into discrete payments as CenturyLink wanted.²¹⁵

CenturyLink’s fourth dispute category provides a good example.²¹⁶ That dispute arises from an inadvertent formula error that led some DS3 CLF circuits to be counted as more-expensive DS3 CLS circuits in certain quarters, to CenturyLink’s detriment.²¹⁷ At the same time, however, the same formula error *also* led some other DS3 CLS circuits to be counted as *less-expensive* DS3 CLF circuits – to CenturyLink’s advantage.²¹⁸ Had CenturyLink properly

²¹³ See Mason Decl. ¶ 49.

²¹⁴ See *id.* ¶¶ 7, 50.

²¹⁵ See *id.* ¶¶ 50-51.

²¹⁶ Cf. Compl. ¶¶ 57-59 (Misdesignating DS3 CLF Units as DS3 CLS Units).

²¹⁷ See Mason Decl. ¶¶ 87-89.

²¹⁸ See *infra* Part II.C.

raised that issue before concurrence, Verizon would have corrected the error and proposed a new credit amount that on-balance would have been *lower* and less favorable to CenturyLink.²¹⁹ But CenturyLink instead demanded immediate, full payment of the original proposed amount, even though that amount rested on the very same formula that CenturyLink was claiming to be erroneous with respect to the “disputed” amounts. That anomaly well demonstrates why Verizon properly rejected CenturyLink’s “pay part now, part later” approach.

The Service Agreements thus gave CenturyLink a choice each quarter: it could reach full agreement with Verizon on the entire credit amount and receive immediate payment, or it could raise disputes and receive payment after those disputes were resolved. Here, CenturyLink eventually decided that it wanted payment and so provided full concurrences for PY2Q2 – PY3Q4.²²⁰ By agreeing to the credit amount, each party knowingly gave up its right to claim later that the Billing Credits should have been more (or less).²²¹

There is nothing unfair about holding CenturyLink to that choice.²²² CenturyLink’s disputes in these quarters, by its own account, involved merely 1-2% of the overall credit amounts.²²³ The Commission has called comparable intercarrier-billing error rates “nominal”

²¹⁹ See Mason Decl. ¶ 89.

²²⁰ See *id.* ¶¶ 42-51.

²²¹ See 2014 Service Agreement, Ex. B § 8(e)-(f).

²²² Notice of Apparent Liability for Forfeiture, *NOS Communications, Inc.*, 16 FCC Rcd 8133 (2001) (“*NOS*”), which CenturyLink cites (Legal Analysis at 29), is inapposite. There, the Commission found that a carrier had misled its retail customers by engaging in “deceptive marketing practices” that falsely promised certain “credits and discounts which never materialize[d].” *NOS* ¶¶ 4, 6. CenturyLink does not and cannot allege that Verizon misled or deceived it about the Billing Credits here.

²²³ See Compl. ¶¶ 98-99 & Tbl. 12 (showing small size of CenturyLink’s disputes compared to overall credit amount).

and “extremely low,”²²⁴ and no coercion or bullying was required for CenturyLink to decide to waive such nominal disputes so that it could obtain prompt and final payment of a much larger Billing Credit. If CenturyLink thought that the disputed amounts in PY2Q2 – PY3Q4 were material, it would have had reason to defer payment of those credits while it pursued its claims. But, having declined to do so, it should be held to its agreement that the “Billing Credits as determined by Verizon are not subject to dispute” once paid.²²⁵

C. CenturyLink’s Common-Law Equitable Arguments Fail

CenturyLink’s reliance on waiver and estoppel principles is equally misplaced.²²⁶ Most fundamentally, these arguments fail because they again focus on a 30-day deadline that applies to business-as-usual disputes of Verizon’s monthly charges rather than to CenturyLink’s disputes of the Billing Credits.²²⁷ But even leaving that aside, CenturyLink’s common-law arguments are barred under the filed-rate doctrine. That doctrine provides that “the rate of the carrier duly filed is the only lawful charge.”²²⁸ Because “[r]ates . . . do not exist in isolation,” however, the filed-rate doctrine also requires strict enforcement of a tariff’s non-rate provisions.²²⁹ Here, the

²²⁴ Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, ¶¶ 26, 29 (2001) (“*Verizon Pennsylvania Order*”).

²²⁵ 2014 Service Agreement, Ex. B § 8(f).

²²⁶ *Cf.* CenturyLink’s Legal Analysis at 17-19.

²²⁷ Compare *id.* at 17 (discussing common-law equitable principles in context of a “strict 30-day time bar” that Verizon supposedly “asserted”) with *supra* pp. 33-37 (explaining why the 30-day deadline provisions are a red herring).

²²⁸ *AT&T*, 524 U.S. at 222.

²²⁹ *Id.* at 223; see Order, *Richman Bros. Records, Inc. v. U.S. Sprint Commc’ns Co.*, 10 FCC Rcd 13639, ¶ 12 (1995) (filed-rate doctrine requires enforcement of “all tariff provisions, not just . . . those pertaining to rates”); *Global NAPS, Inc. v. Verizon New England Inc.*, 327 F. Supp. 2d 290, 301 (D. Vt. 2004) (“The filed rate doctrine applies not only to rates or charges, but also to

dispute provisions that foreclose CenturyLink’s claims appeared in filed contract tariffs.²³⁰

Those tariffed dispute provisions, no less than the rates themselves, must be given effect.

The filed-rate doctrine disposes of CenturyLink’s attempt to invoke common-law equitable principles. Although CenturyLink asserts that Verizon waived the Service Agreements’ dispute bar,²³¹ the filed-rate doctrine precludes customers from using equitable “waiver” defenses to escape compliance with a valid tariff.²³² So too with CenturyLink’s estoppel argument: customers cannot avoid tariff compliance “by invoking common-law claims and defenses such as ignorance, estoppel, or prior agreement to a different [arrangement].”²³³ Thus, even if CenturyLink’s description of Verizon’s conduct were true, it would make little difference. Under the filed-rate doctrine, “a telecommunications provider’s conduct is completely irrelevant” to whether a valid tariff’s terms should be enforced as written.²³⁴

non-price aspects of telecommunications services, such as special services or billing options.”), *aff’d*, *Global NAPS, Inc. v. FCC*, 454 F.3d 91 (2d Cir. 2006).

²³⁰ See, e.g., CTL Ex. 17, Verizon FCC Tariff No. 1 § 21.66(H); CTL Ex. 18, Verizon FCC Tariff No. 11 § 32.66(H); CTL Ex. 19, Verizon FCC Tariff No. 14 § 21.35(H).

²³¹ Cf. CenturyLink’s Legal Analysis at 17-19.

²³² See *Midcontinent Commc’ns v. MCI Commc’ns Servs., Inc.*, No. 4:16-CV-04070-KES, 2018 WL 1370257, at *7-8 (D.S.D. Mar. 16, 2018) (filed-rate doctrine barred “affirmative defense[] of waiver”); *Bowers v. Windstream Kentucky East, LLC*, No. 3:09CV-440-H, 2011 WL 4601032, at *4 (W.D. Ky. Oct. 3, 2011) (“Filed Rate Doctrine overrides equitable defenses,” including “waiver”); *International Telecomms. Exch. Corp. v. MCI Telecomms. Corp.*, 892 F. Supp. 1520, 1540-41 (N.D. Ga. 1995) (filed-rate doctrine preempted waiver defense); *MCI Telecomms. Corp. v. Best Tel. Co.*, 898 F. Supp. 868, 873-74 (S.D. Fla. 1994) (similar).

²³³ *Reiter v. Cooper*, 507 U.S. 258, 266 (1993); see *WorldCom Techs., Inc. v. ACS Telecom, Inc.*, No. 00 Civ. 3200 (LLS), 2001 WL 1537696, at *6 (S.D.N.Y. Dec. 3, 2001) (customer’s “affirmative defense of estoppel is barred by the filed rate doctrine”).

²³⁴ *MCI*, 898 F. Supp. at 874. For that reason, the Commission has expressed “doubt[] that carriers can be estopped from enforcing or complying with valid tariff provisions.” Memorandum Opinion and Order, *Communique Telecomms., Inc. d/b/a Logica Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau*, 14 FCC Rcd 13635, ¶ 29 (1999) (“Communique Order”).

Verizon could not have waived the contract tariffs’ dispute prohibition even if it had wanted to.²³⁵

Regardless, CenturyLink’s equitable arguments also fail on their own terms. From the very outset of these disputes, Verizon consistently told CenturyLink that it could not challenge Billing Credits with which it had already concurred.²³⁶ CenturyLink first submitted its claims in June and July of 2014, but because the system automatically rejected most of CenturyLink’s claims, Verizon’s team subsequently worked with CenturyLink to navigate that issue and understand the substance of CenturyLink’s concerns.²³⁷ Verizon told CenturyLink that its “disputes would remain open” while that process was ongoing.²³⁸ But by September 15, 2014 – after roughly two months of dialogue – Verizon conveyed its “final response” and denied CenturyLink’s claims because (among other reasons) CenturyLink had already “agreed to the credit” amounts at issue.²³⁹ At no point throughout the process did Verizon suggest that CenturyLink’s claims were timely or otherwise consistent with the Service Agreements.²⁴⁰

²³⁵ CenturyLink’s own reliance on this principle is misplaced. *Cf.* Compl. ¶ 119 n.196. Although CenturyLink asserts that it “cannot waive its right to be charged the correct amounts under the tariff,” *id.*, the case it cites addressed *equitable* waiver principles – not dispute waivers contained in the tariff itself. *See Qwest*, 371 F. Supp. 2d at 1251-52 (discussing “affirmative defenses of unclean hands, accord and satisfaction, waiver and estoppel”); *see also id.* at 1252 (“the parties were certainly free to contract away any procedural issues or technical disputes regarding their billing procedures”). CenturyLink cites no authority allowing a customer to evade dispute restrictions codified in a contract tariff to which it agreed. *See supra* Part I.B.2.c.

²³⁶ *See* Szol Decl. ¶¶ 26-35; Mason Decl. ¶¶ 42-51.

²³⁷ *See* Szol Decl. ¶¶ 26-28 & Dispute History Chart.

²³⁸ *See* Szol Decl. ¶ 28 & CTL Ex. 40.03, at 3.

²³⁹ *See* Szol Decl. ¶ 29 & CTL Ex. 40.03, at 2.

²⁴⁰ *See* Szol Decl. ¶¶ 26-35; Mason Decl. ¶¶ 42-47; *see also* CTL Ex. 46.04, at 1 (Verizon contemporaneous email stating that the Billing Credits were “not subject to dispute”).

Such conduct does not reveal any “clear manifestation of intent to relinquish a contractual protection.”²⁴¹ Verizon’s initial decision to hold CenturyLink’s claims open (despite their automatic rejection in the system) merely reflected a desire to understand the concerns of a valued customer.²⁴² That process took some time, some of which was due to CenturyLink’s delay in answering Verizon’s questions.²⁴³ In that context, Verizon’s failure to respond immediately to every one of CenturyLink’s inquiries did not effect a waiver.²⁴⁴ To the contrary, the Service Agreements provided that a “failure or delay of either party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement . . . , shall in no way be construed to be a waiver.”²⁴⁵ That no-waiver clause precludes any inference that Verizon intentionally relinquished its rights under the Service Agreements’ dispute provisions.²⁴⁶

²⁴¹ *Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgmt., L.P.*, 850 N.E.2d 653, 658 (N.Y. 2006) (holding that contractual waiver “should not be lightly presumed” under New York law).

²⁴² See Szol Decl. ¶¶ 26-29.

²⁴³ See, e.g., *id.* ¶¶ 27-28 (describing CenturyLink delay in providing information and noting subsequent claim denial for lack of “additional supporting documentation”).

²⁴⁴ See, e.g., *Minichello v. Northern Assur. Co. of Am.*, 758 N.Y.S.2d 669, 670-71 (App. Div. 2003) (no waiver where defendant’s “delay in denial of the claim” was “attributable to the investigation of the claim”); *Travelers Cas. & Sur. Co. v. Dormitory Auth.-State of New York*, 735 F. Supp. 2d 42, 67-68 (S.D.N.Y. 2010) (no waiver from delay due to investigation of claim).

²⁴⁵ 2009 Service Agreement § 6(c); 2014 Service Agreement § 6(c).

²⁴⁶ See, e.g., *Awards.com, LLC v. Kinko’s, Inc.*, 834 N.Y.S.2d 147, 155 (App. Div. 2007) (rejecting waiver argument due to “unambiguous non-waiver clause” and noting that “[s]uch clauses are uniformly enforced” in New York); *Norwest Fin., Inc. v. Fernández*, 86 F. Supp. 2d 212, 230 (S.D.N.Y. 2000) (enforcing similarly worded “[n]o-waiver” provision[]), *aff’d*, No. 00-7544, 2000 WL 1341478 (2d Cir. Sept. 14, 2000) (judgment noted at 225 F.3d 646 (table)), *modified on other grounds on recon.*, No. 00-7544, 2000 WL 1741659 (2d Cir. Nov. 27, 2000).

CenturyLink’s estoppel argument fares no better. To succeed on an equitable-estoppel claim (were one available in this proceeding), CenturyLink would have to show that Verizon engaged in “affirmative misconduct” with respect to the dispute provisions²⁴⁷ and that CenturyLink “justifiably relied” on such misconduct.²⁴⁸ It cannot. As explained above, Verizon’s periodic reporting accurately disclosed Verizon’s quarterly credit calculations and gave CenturyLink everything it needed to make an informed decision about whether to concur in those calculations. Further, Verizon’s dispute team went to great lengths to engage with CenturyLink’s representatives, and its disposition of CenturyLink’s claims was reasonable.²⁴⁹ In the final analysis, CenturyLink’s claims are barred not because of anything Verizon did, but because CenturyLink agreed to the credit amounts that it now disputes.

II. CENTURYLINK’S CLAIMS FAIL ON THE MERITS

CenturyLink’s claims also lack substantive merit. The Complaint alleges that Verizon overbilled CenturyLink in six ways under the Service Agreements and associated tariffs.²⁵⁰ For the most part, CenturyLink’s allegations are wrong. Verizon counted “units” consistently since the Price Flex Deal’s inception, and Verizon’s methodology was baked into the contract “flat rates” at the very heart of the parties’ bargain.²⁵¹ Further, Verizon has reviewed CenturyLink’s

²⁴⁷ *Morris Commc’ns, Inc. v. FCC*, 566 F.3d 184, 191 (D.C. Cir. 2009).

²⁴⁸ *Communique Order* ¶ 29; *see also Ellul v. Congregation of Christian Bros.*, 774 F.3d 791, 802 (2d Cir. 2014) (rejecting equitable-estoppel argument under New York law for failure to show justifiable reliance on any “misrepresentations”).

²⁴⁹ *See* Szol Decl. ¶¶ 26-51.

²⁵⁰ Compl. ¶¶ 35-69.

²⁵¹ *See* Mason Decl. ¶¶ 96-101; Alston Decl. ¶¶ 26-31.

claims on a circuit-by-circuit basis and determined that, in most cases, Verizon’s methodology complied fully with the governing contract terms.²⁵²

Verizon’s review also identified a few circuits – in Dispute Categories #2 and #4 – that were inadvertently counted incorrectly. In many cases, CenturyLink benefited in offsetting ways from those errors.²⁵³ And in all cases, those errors were unintentional and minor. As CenturyLink concedes, its disputes (even taken at face value) concern a “small portion” of the overall “undisputed amount[s]” of Billing Credits it received under the Price Flex Deal.²⁵⁴

It is no surprise that such isolated errors existed. The Commission has recognized that “high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate.”²⁵⁵ The Commission thus views an error rate in the range of 2-3% as “nominal,” and it has noted that such a 2-3% error rate in a carrier’s “wholesale bills” is “well within the level of error the Commission concluded [i]s acceptable.”²⁵⁶ That observation applies here. The Price Flex Deal provided CenturyLink with substantial discounts on thousands of circuits over an eight-year span, and Verizon calculated “units” correctly for the overwhelming majority of those

²⁵² See *infra* pp. 51-64.

²⁵³ See, e.g., Mason Decl. ¶¶ 71, 75 (disconnected circuits), 87-89 (CLF vs. CLS formula).

²⁵⁴ Compl. ¶ 5.

²⁵⁵ *Verizon Pennsylvania Order* ¶ 26 n.93.

²⁵⁶ Memorandum Opinion and Order, *Application of Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275, ¶ 127 (2002) (“*Verizon New Jersey Order*”).

circuits.²⁵⁷ In that context, the errors at issue here are trivial. That Verizon’s billing fell short of being “perfectly accurate” does not demonstrate any violation of the Act.²⁵⁸

Against that backdrop, Verizon’s legal analysis of each of CenturyLink’s six substantive disputes is set forth below.

A. Dispute 1: DS3 CLF Units In FMS LATAs

CenturyLink’s first set of claims concerns the way Verizon counted DS3 CLF “units” that were billed under Verizon’s legacy facilities management service (“FMS”). FMS allowed customers to pay for special-access transport capacity at “discounted rates calculated on a DS0 equivalent basis.”²⁵⁹ In other words, if a customer used only a portion of a channelized DS1 or DS3 circuit under FMS, it paid only for the portion of the circuit it actually used. The 2009 Service Agreement recognized that many of the circuits eligible for flat-rate pricing were deployed in FMS territories. The Agreement therefore covered FMS charges (defined by USOC) and instructed Verizon to count FMS circuits the same way as other circuits: by looking to the Class of Service-USOC combination.²⁶⁰ Because CenturyLink converted off FMS in July 2014, those FMS-specific provisions were removed from the 2014 Service Agreement.

²⁵⁷ See Alston Decl. ¶¶ 13-14 (calculating CenturyLink’s approximate overall discount).

²⁵⁸ *Verizon Pennsylvania Order* ¶ 26 n.93; *Verizon New Jersey Order* ¶ 126.

²⁵⁹ Public Notice, *Comments Invited on Application of Verizon Delaware LLC, Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia Inc. to Discontinue Domestic Telecommunications Services*, 23 FCC Rcd 18108, 18108 (2008) (“FMS Public Notice”).

²⁶⁰ See 2009 Service Agreement, Ex. B § 2 (defining USOCs associated with “Billed FMS Revenue”); *id.* § 3(a)(iii) (requiring CenturyLink to remain subscribed to “special access FMS”); *id.* § 5(a)(ii) (defining “DS3 CLF Qualifying Services” by Class of Service and USOC, including USOCs associated with FMS service).

CenturyLink’s allegation that Verizon improperly “counted as units a large number of \$0 DS3 CLF circuits in the FMS LATAs”²⁶¹ is meritless. Under the 2009 Service Agreement, a “Billed DS3 CLF Unit” – which determined the size of the DS3 CLF Billing Credit²⁶² – was defined as any “DS3 CLF Unit for which one or more MRCs, using any of the applicable [Class of Service]-USOC combinations set forth in Section 5.a.ii below, was billed to Customer.”²⁶³ A “DS3 CLF Unit,” in turn, was an individual DS3 CLF circuit that was “billed using one or more of the USOCs specified in Section 5.a.ii.”²⁶⁴ Accordingly, if a DS3 circuit had the correct bandwidth and Class of Service (which nobody denies was true of the disputed circuits here), the key question was simply whether the circuit billed a qualifying USOC.

The FMS DS3 CLF circuits that CenturyLink disputes each met that test. Those circuits did not bill “\$0”; they billed monthly recurring charges that were calculated on a DS0-equivalent basis.²⁶⁵ And, as Verizon’s monthly bills made clear, such circuits billed monthly recurring charges with a Class-of-Service-USOC combination that made them “Billed DS3 CLF Units” under the Service Agreements and contract tariffs.²⁶⁶ The Class of Service and USOCs alone demonstrate that such circuits were properly classified as Billed DS3 CLF units.²⁶⁷

²⁶¹ Compl. ¶ 42.

²⁶² See 2009 Service Agreement, Ex. B § 7(b).

²⁶³ *Id.* § 2.

²⁶⁴ *Id.* §§ 2, 5(a)(ii).

²⁶⁵ See Mason Decl. ¶¶ 58-68.

²⁶⁶ See *id.*; see, e.g., VZ Exs. 53, 54 (CSR excerpts demonstrating these facts).

²⁶⁷ See 2009 Service Agreement, Ex. B §§ 2, 5(a)(2) (defining DS3 CLF “units” in terms of Class-of-Service-USOC combination). The same conclusion followed under the 2014 Service Agreement, which included a broader definition of DS3 CLF service that did not require any particular USOC. See 2014 Service Agreement, Ex. B §§ 2(f), 6.

To be sure, Verizon’s monthly bills listed FMS DS3 CLF charges under lower-level circuit identifiers – each of which represented an individual DS1 slot within a DS3 CLF circuit – rather than directly under the top-level DS3 circuit identifier.²⁶⁸ From that, CenturyLink appears to conclude that Verizon was charging \$0 for the top-level DS3 circuits themselves.²⁶⁹ But that misunderstands FMS’s basic structure. Under FMS, Verizon charged various rate elements for special-access transport capacity based on the number of DS0-equivalent channels that CenturyLink actually utilized, even where the services were provided over a higher capacity interface like a DS3.²⁷⁰ For that reason, the charges appeared next to lower-level facilities (which dictated the amount of the charges) on Verizon’s invoices. But such charges remained for *DS3 service* and were linked directly to the DS3 interface that the lower-level facilities rode.²⁷¹ Those charges – which had a qualifying Class of Service and USOC – made clear that the DS3 facilities to which they corresponded were “Billed DS3 CLF Units.”

CenturyLink’s contrary position is especially implausible because it assumes that Verizon should have been provisioning the roughly 1,400 DS3 CLF circuits at issue for free.

CenturyLink agrees that this is the logical conclusion of its argument: if it were correct that DS3

²⁶⁸ See Mason Decl. ¶¶ 60-65; see, e.g., VZ Exs. 53, 54 (excerpts from CSR).

²⁶⁹ See Compl. ¶ 42.

²⁷⁰ See CTL Ex. 25, Verizon FCC Tariff No. 11 § 7.2.16(F)(1) (“[A] rate per DS0 equivalent channel applies for each DS0 channel termination provided.”); *id.* § 7.2.16(F)(3) (“The FMS Channel Mileage rate element applies as a fixed rate and a rate per mile for each DS0 equivalent channel provided as FMS.”); *id.* § 7.2.16(F)(4) (“FMS multiplexing applies for each DS0 equivalent channel provided as FMS.”); CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(D)(11)(a) (providing for the rate element of primary premises channel termination based on “DS0 equivalent channel terminations”); *id.* § 7.2.13(D)(11)(c) (“[M]ileage rate elements apply at DS0 equivalency.”); *id.* § 7.2.13(D)(11)(d) (“Multiplexing is charged on a DS0 equivalency basis.”).

²⁷¹ See Mason Decl. ¶¶ 60-67.

CLF circuits in FMS territories actually billed \$0, then, “strictly speaking, not a single one of these DS3 CLF circuits should have been included in the quarterly credit calculations.”²⁷² Yet even CenturyLink concedes that such a result would be irrational, because the parties plainly intended for Verizon to receive at least *some* “compensation based on its provision of the underlying services.”²⁷³ This concession – that the natural consequence of CenturyLink’s contract interpretation is a result all sides agree is absurd – is fatal to its position.²⁷⁴

To avoid that conclusion, CenturyLink invents its own methodology under which Verizon should have tallied up the total number of DS0 channels used, divided by 672, and rounded to the nearest whole number.²⁷⁵ Although that “divide by 672” methodology would address the anomaly described above, it has no basis in the contracts. Indeed, CenturyLink does not even attempt to ground its methodology in the language of the Service Agreements, which make clear that a DS3 circuit counts either as one whole “unit” or as nothing.²⁷⁶ In the face of that plain language, counting FMS DS3 CLF circuits as whole “units” is the only sensible outcome. CenturyLink’s attempt to invent an equitable middle ground is unpersuasive.²⁷⁷

²⁷² Compl. ¶ 44.

²⁷³ *Id.* ¶ 43.

²⁷⁴ See Memorandum Opinion and Order, *AT&T Corp. v. Alpine Commc’ns, LLC*, 27 FCC Rcd 11511, ¶ 29 (2012) (“tariffs should be construed to avoid unfair, unusual, absurd or improbable results”) (“*AT&T v. Alpine*”); Memorandum Opinion and Order on Reconsideration, *AT&T Commc’ns Tariff FCC Nos. 9, 10, and 11*, 104 F.C.C.2d 773, ¶ 16 (1986) (rejecting proposed tariff interpretation that would have led to a “clearly irrational result”).

²⁷⁵ Compl. ¶ 44.

²⁷⁶ See 2009 Service Agreement, Ex. B § 2 (defining a “DS3 CLF Unit” as “an individual Qualifying Service circuit of bandwidth 44.736 Mbps”); Mason Decl. ¶¶ 67-68.

²⁷⁷ See *Ryder Order* ¶ 24 (noting high threshold for “contract reformation under the Sierra-Mobile doctrine” and rejecting attempt to equitably alter contract tariff).

B. Dispute 2: DS3 Circuits Lacking USOCs Or MRCs

CenturyLink’s next set of claims concerns circuits for which Verizon allegedly failed to bill a qualifying MRC or USOC.²⁷⁸ For the most part, CenturyLink’s allegations are wrong. Verizon generally counted only circuits that had billed a qualifying MRC and, while the 2009 Service Agreement was in effect, circuits that had a qualifying USOC.²⁷⁹ The 2014 Service Agreement removed the USOC requirement on which CenturyLink relies.²⁸⁰ Many of CenturyLink’s disputes about circuits billed in or after 2014 are invalid for that reason alone.

That said, Verizon has identified a small number of circuits that were inadvertently counted as “units” in error.²⁸¹ These included DS3 circuits that had been disconnected in a previous month or that lacked a qualifying USOC under the 2009 Service Agreement – for instance, because they rode a higher-capacity OC48 facility.²⁸² All told, Verizon has identified

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[[END CONFIDENTIAL]] DS3 “units” across the board under the Price Flex Deal.²⁸⁴

The roughly 1% error rate that CenturyLink’s claims identify is “nominal” and demonstrates no violation of the Act.²⁸⁵

²⁷⁸ See Compl. ¶¶ 48-51.

²⁷⁹ See Mason Decl. ¶¶ 69-78 & VZ Ex. 60 (comprehensively analyzing CenturyLink’s disputes in this category).

²⁸⁰ See 2014 Service Agreement, Ex. B §§ 2(f)-(g), 6.

²⁸¹ See Mason Decl. ¶ 77.

²⁸² See *id.* ¶ 76 & VZ Ex. 60.

²⁸³ See Mason Decl. ¶ 77.

²⁸⁴ See *id.* ¶ 78.

²⁸⁵ *Verizon Pennsylvania Order* ¶ 26.

C. Dispute 3: Meet-Point Circuits

CenturyLink’s third dispute category concerns meet-point circuits, which are circuits that extend across multiple Verizon operating companies’ territories.²⁸⁶ Each company billed for its own respective portion of a meet-point circuit under a separate BAN and proportioned its charges based on the percentage of the circuit that fell within its territory, using the industry-standard factors in NECA Tariff No. 4. When Verizon tabulated the number of “units” for purposes of the Billing Credits, it counted such meet-point circuits as multiple “units” – one unit for each BAN under which Verizon billed the circuit.²⁸⁷ CenturyLink argues that Verizon should have counted each meet-point circuit only once.

Verizon’s methodology for counting meet-point circuits by BAN comported with the Service Agreements. The Service Agreements required that Verizon count meet-point circuits by the number of “Billed DS3 CLS Units.”²⁸⁸ They defined a “Billed DS3 CLS Unit,” in turn, as a circuit for which “Verizon *billed* Qualifying Monthly Recurring Charges.”²⁸⁹ Each Verizon operating company separately billed monthly recurring charges for its portion of a meet-point circuit. Because those companies separately billed multiple monthly charges for meet-point circuits, Verizon properly counted the circuits as multiple *billed* “units.”

That practice conformed to the parties’ intent in negotiating the Service Agreements. The flat rates in the 2009 Service Agreement – which were the centerpiece of the parties’ negotiations – were predicated on a benchmark “unit” total that similarly counted meet-point

²⁸⁶ See Compl. ¶¶ 52-56.

²⁸⁷ See Mason Decl. ¶ 80.

²⁸⁸ 2009 Service Agreement, Ex. B § 7; 2014 Service Agreement, Ex. B § 7(f)(i).

²⁸⁹ 2014 Service Agreement, Ex. B § 2(g) (emphasis added); see 2009 Service Agreement, Ex. B § 2 (similar).

circuits spanning multiple Verizon operating companies’ territories as more than one unit.²⁹⁰

Were CenturyLink correct that such a meet-point circuit should count as only one “unit,” the unit total during the benchmark period would have been lower. That would have yielded higher flat rates that were less favorable to CenturyLink.²⁹¹ The negotiating history – in which CenturyLink consented to and benefited from the very methodology for counting those meet-point circuits that it now disputes – provides reason enough to deny CenturyLink’s claims.²⁹²

In addition, the only coherent way to include such meet-point circuits in the Service Agreements’ flat-rate pricing was to treat them as multiple “units.” That is because each Verizon operating company billed for only a fraction of a meet-point circuit based on the proportion of the circuit in its territory; no Verizon company billed CenturyLink at the full interoffice transport rate.²⁹³ By contrast, the Service Agreements required that CenturyLink pay a *full* tariffed rate for a circuit before it could obtain flat-rate pricing on that circuit.²⁹⁴ Thus, if the parties had treated each meet-point circuit as a single, unitary individual circuit spanning multiple territories, each operating company’s monthly transport charge for the circuit would

²⁹⁰ See Mason Decl. ¶¶ 96-101.

²⁹¹ See *id.*; Alston Decl. ¶¶ 25-31 & Tbl. 7.

²⁹² See *In re Nortel Networks Inc.*, 737 F.3d 265, 272 (3d Cir. 2013) (“New York law permits resort to extrinsic evidence, such as negotiating history, when an agreement contains an ambiguity.”); *In re Holocaust Victim Assets Litig.*, 282 F.3d 103, 110-11 (2d Cir. 2002) (*per curiam*) (noting need to consider “negotiating history” in interpreting ambiguous contract provision).

²⁹³ See Mason Decl. ¶¶ 81-84.

²⁹⁴ See 2009 Service Agreement, Ex. B § 5(b) (MRCs eligible for discount pricing require CenturyLink to pay the full tariffed amount “without any offsets or reductions from the billed amount for the Qualifying Services, in accordance with the terms of the applicable Tariff”); *id.* § 5(c) (excluding “fractional debit/credit amounts” from MRC); 2014 Service Agreement, Ex. B § 6(a) (similar).

have been a fractional charge ineligible for flat-rate pricing. And, under that interpretation, CenturyLink would have been entitled to no discount at all on meet-point circuits.²⁹⁵

Verizon’s approach avoided that anomaly. Verizon considered each of these meet-point circuits to be multiple units billing on multiple BANs. Under that approach, each operating company’s interoffice transport charge was a full monthly recurring charge for the corresponding “unit” (the portion of the circuit in the company’s territory), which allowed it to qualify for flat-rate pricing under the Service Agreements.²⁹⁶ Because CenturyLink’s interpretation is inconsistent with that principle, the Bureau should reject the meet-point disputes in their entirety.

D. Dispute 4: DS3 CLF vs. DS3 CLS Units

CenturyLink next alleges that Verizon improperly counted some DS3 CLF circuits as more-expensive DS3 CLS circuits, thereby reducing the Billing Credits Verizon paid.²⁹⁷

Verizon acknowledges that it inadvertently classified **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** DS3 CLF circuits as CLS circuits during four months – April 2014, July 2014, August 2014, and March 2015 – of the 48-month dispute period.²⁹⁸ The inadvertent classification error appears to have been introduced as Verizon updated its materials during the transition from the 2009 to the 2014 Service Agreement. The same circuits were properly classified during all other months at issue.²⁹⁹

CenturyLink, however, *benefited* from this error on net, because the same formula discrepancy also classified **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

²⁹⁵ See Mason Decl. ¶¶ 81-84.

²⁹⁶ See *id.*

²⁹⁷ See Compl. ¶¶ 57-59.

²⁹⁸ See Mason Decl. ¶¶ 87-88 & VZ Ex. 65.

²⁹⁹ See *id.*

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[[END

CONFIDENTIAL]].³⁰¹ On balance, therefore, the formula error worked to CenturyLink’s advantage.³⁰² CenturyLink’s claims should be dismissed because they seek a windfall based on an error from which CenturyLink ultimately benefited.³⁰³

E. Dispute 5: DS0 vs. DS1 Units

CenturyLink also contends that Verizon improperly classified two DS0 units as DS1 circuits when calculating the Billing Credits. But Verizon correctly counted the channel terminations associated with both of those circuits as DS1 “units” for purposes of the Billing Credits.³⁰⁴ Both of the circuits in question, 11.XHGS.129187..PA and 11.XHGS.131582..PA, had a Class of Service of XDH1X and billed several qualifying USOCs, including TNT8X and 1T58S.³⁰⁵ That combination – Class of Service XDH1X plus a USOC of either TNT8X or 1T58S – signifies a DS1 circuit and was specifically designated as a “DS1 Qualifying Service[.]”

³⁰⁰ See VZ Exs. 65, 66.

³⁰¹ See Mason Decl. ¶¶ 88-89 & VZ Ex. 66.

³⁰² See Mason Decl. ¶ 89 & VZ Ex. 66.

³⁰³ See Memorandum Opinion and Order, *AT&T Commc’ns v. Northwestern Bell Tel. Co.*, 8 FCC Rcd 1014, ¶ 21 (1993) (“[Complainant] has made a claim for specific damages, and [Defendant], in turn, may properly argue that it is entitled to certain offsets against those damages.”); Memorandum Opinion and Order, *Allnet Commc’n Servs., Inc. v. Wisconsin Bell, Inc.*, 7 FCC Rcd 932, ¶ 3 (1992) (“the Commission had emphasized that the defendants would be given an opportunity to disclaim liability for refunds by showing that [certain] overstatements identified . . . were offset by understatements in other related . . . categories”); *National Cash Register Co. v. Joseph*, 86 N.E.2d 561, 562 (N.Y. 1949) (explaining doctrine of recoupment).

³⁰⁴ See Mason Decl. ¶¶ 90-92.

³⁰⁵ See *id.* & VZ Ex. 67.

under the Service Agreements.³⁰⁶ Further, this dispute is actually just a dispute of Verizon’s monthly bills, which charged both circuits at DS1 rates.³⁰⁷ Accordingly, this dispute is time-barred under the Service Agreements’ 30-day deadline.³⁰⁸

F. Dispute 6: Network Optimization

CenturyLink’s final claim alleges that, while CenturyLink was still subscribed to FMS, Verizon should have optimized CenturyLink’s network to reduce the total number of DS3s used. According to CenturyLink, Verizon’s failure to do so forced CenturyLink to pay for too many DS3s after CenturyLink converted off FMS in July 2014.³⁰⁹ CenturyLink’s claim fails both substantively and procedurally.

1. CenturyLink’s network-optimization claim fails for the simple reason that Verizon never had any duty to maximize *CenturyLink’s* network efficiencies. Verizon’s FMS tariff gave Verizon the prerogative to organize a wholesale customer’s special-access circuits “to maximize network efficiencies and to optimize economic efficiencies” from Verizon’s own perspective.³¹⁰ That arrangement benefited FMS customers like CenturyLink: because FMS customers paid only for the channels they actually used, regardless of how those channels were configured, CenturyLink was able to pay Verizon as though it had a perfectly efficient network

³⁰⁶ 2009 Service Agreement, Ex. B § 2; *see* 2014 Service Agreement, Ex. B § 2(j) (similar).

³⁰⁷ *See* Mason Decl. ¶ 39; *see also* Brown Decl. ¶ 27 (arguing that “Verizon’s monthly invoices” misclassified one of these circuits as “a DS1, even though it has a DS0 circuit ID”).

³⁰⁸ *See* 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a); *see also infra* pp. 64-65 (explaining this principle in detail as to CenturyLink’s network-optimization claims).

³⁰⁹ *See* Compl. ¶¶ 64-69; Brown Decl. ¶ 28 & CTL Ex. 36 (identifying allegedly underutilized DS3 circuits).

³¹⁰ CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(A); CTL Ex. 25, Verizon FCC Tariff No. 11 § 7.2.16(A).

without having to do any network-optimization work itself.³¹¹ In other words, Verizon arranged CenturyLink’s circuits in the most efficient manner for Verizon, and then passed along some of the resulting cost savings to CenturyLink.³¹²

The Commission’s order approving Verizon’s (then Bell Atlantic’s) FMS tariff confirms that interpretation. Verizon sought and obtained approval to offer FMS based on the argument that FMS would allow Verizon to “rearrange customer services *to optimize its own network*.”³¹³ The Description and Justification that Verizon filed contemporaneously with its application similarly explained that Verizon intended to route special-access channels “in the most efficient manner in accordance with its network objectives.”³¹⁴ By advancing Verizon’s own network-management objectives, such an arrangement led to “cost savings” for the “FMS customer.”³¹⁵

CenturyLink’s contrary interpretation of the FMS tariff is implausible. CenturyLink asserts that the tariff’s “optimize economic efficiencies”³¹⁶ language required Verizon to provision circuits from the perspective of “CenturyLink’s economic and network efficiencies.”³¹⁷ But that interpretation conflicts with FMS’s core premise, which charged

³¹¹ See Declaration of Susan Fox and Marian Howell ¶ 4 (“Fox-Howell Decl.”).

³¹² See *id.* ¶¶ 4-5.

³¹³ Transmittal No. 586, Order, *Bell Atl. Tel. Cos. Tariff FCC No. 1 Facilities Mgmt. Serv.*, 8 FCC Rcd 8214, ¶ 8 (CCB 1993) (“*FMS Tariff Order*”) (emphasis added); see *id.* ¶ 6 (noting argument that FMS could “*optimize the carrier’s own interoffice facilities* and multiplexing resources without the constraint of having to dedicate particular facilities to particular customers”) (emphasis added).

³¹⁴ Bell Atlantic FCC Tariff No. 1, Transmittal No. 586, Description and Justification at 2 (July 20, 1993) (“*FMS D&J*”).

³¹⁵ *Id.* at 11.

³¹⁶ CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(A); CTL Ex. 25, Verizon FCC Tariff No. 11 § 7.2.16(A).

³¹⁷ Compl. ¶ 65.

customers on a DS0-equivalent basis precisely *because* Verizon assumed the right to arrange the circuits for its own benefit. Verizon’s tariff papers described that trade-off in detail.³¹⁸ Under CenturyLink’s interpretation, however, Verizon would have given away better pricing for nothing: customers would have retained control over provisioning (which they already had under Verizon’s standard special-access plans) while also receiving better DS0-equivalent pricing on top. Such an arrangement would have made no sense, and Verizon never would have offered it.³¹⁹

CenturyLink’s interpretation also would have been unworkable in practice. Network optimization is a complicated endeavor that requires detailed information about the party whose network is being optimized.³²⁰ Although Verizon knew how to arrange circuits to serve *its* network objectives, doing so on CenturyLink’s behalf would have been impractical. For example, CenturyLink suggests that Verizon should have unilaterally disconnected all of CenturyLink’s spare or underutilized DS3s immediately upon converting CenturyLink off FMS.³²¹ But Verizon was not privy to CenturyLink’s future plans; for all it knew, CenturyLink was on the verge of adding traffic that soon would have made those circuits fully subscribed. Prematurely disconnecting such circuits could have interfered with CenturyLink’s network objectives and saddled CenturyLink with unnecessary fees. Such a possibility illustrates a

³¹⁸ See, e.g., *FMS Tariff Order* ¶ 6 (reciting Verizon’s argument that “the efficiency of its network is improved and utilization of its facilities is increased so as to increase network capacity,” which in turn permitted it “to charge lower rates for FMS than for traditional special access”); *FMS D&J* at 2 (similar); see also *AT&T v. Alpine* ¶ 29 (tariffs should be interpreted “to advance the purpose for which the tariff was imposed”).

³¹⁹ See Fox-Howell Decl. ¶ 6; see also *AT&T v. Alpine* ¶ 29 (“tariffs should be construed to avoid unfair, unusual, absurd or improbable results”).

³²⁰ See Fox-Howell Decl. ¶ 8.

³²¹ See Compl. ¶ 67.

broader point: the only party capable of fully maximizing CenturyLink’s own economic efficiencies was CenturyLink.³²² That reinforces the conclusion that, as a matter of industry custom and practice, CenturyLink’s reading of the FMS tariff is unreasonable.³²³

Nor did Verizon’s administration of FMS cause CenturyLink any genuine prejudice. CenturyLink admits that, while it was on FMS, it was unaffected by how Verizon organized the network because it paid only for the channels it actually used.³²⁴ Further, when Verizon grandfathered FMS, it gave its customers ample advance notice and generous transition periods.³²⁵ In fact, Verizon first told CenturyLink *in 2008* that its FMS plan was going to expire and that CenturyLink needed to rearrange its own network to facilitate the transition.³²⁶ CenturyLink therefore knew for years it was transitioning to a standard special-access plan that places the onus on customers to “plan for network optimization.”³²⁷ And CenturyLink appears to have successfully rearranged its network in November 2015 to “remove the excess capacity facilities” that it had left in service after FMS.³²⁸ CenturyLink could and should have performed that optimization much earlier: even under FMS, Verizon took customer recommendations

³²² See Fox-Howell Decl. ¶ 8.

³²³ See *id.* ¶¶ 5-8 (explaining that CenturyLink’s interpretation conflicts with industry practice, including the positions conveyed by other FMS customers); Memorandum Opinion and Order, *PCI Commc’ns*, 13 FCC Rcd 25222, ¶ 13 (CPD 1998) (“[L]anguage of the tariff should be interpreted in light of industry practice.”).

³²⁴ See Compl. ¶ 65.

³²⁵ See *FMS Public Notice*, 23 FCC Rcd at 18108-09; see also CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13 (allowing FMS customers a transition period of “up to twelve (12) additional months” after expiration of their plans).

³²⁶ See *FMS Public Notice*, 23 FCC Rcd at 18108-09; CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.16(a)-(c).

³²⁷ CTL Ex. 22, Verizon FCC Tariff No. 1 § 7.2.13(c).

³²⁸ Brown Decl. ¶ 128.

about network configuration, and CenturyLink was actively involved in its own network design during the transition period.³²⁹ Verizon is not liable for CenturyLink’s failure to optimize its own network configuration before November 2015.

2. CenturyLink’s network-optimization claim is also time-barred under the 2014 Service Agreement’s 30-day deadline.³³⁰ CenturyLink’s claim challenges the validity of Verizon’s monthly charges, not the accuracy of its Billing Credit calculations.³³¹ That is because Verizon was permitted to count as a “unit” any DS3 circuit for which Verizon billed a monthly charge during the relevant quarter – regardless of the validity of that underlying charge.³³² If and when CenturyLink disputed any of those monthly charges, those charges would have been excluded from the Billing Credit (thus lowering the credit amount) for the quarter.³³³

There is no question that Verizon billed – and CenturyLink paid – qualifying monthly recurring charges for the DS3 circuits that CenturyLink now asserts should have been optimized.³³⁴ There is thus no question that Verizon properly counted those circuits as “units” when calculating the Billing Credits. CenturyLink’s claim here is that Verizon never should

³²⁹ See Fox-Howell Decl. ¶ 7.

³³⁰ See 2014 Service Agreement, Ex. B § 8(a).

³³¹ See Mason Decl. ¶¶ 93-95.

³³² See 2014 Service Agreement, Ex. B §§ 2(f)-(g), 6.

³³³ See *id.* § 8(a).

³³⁴ Compare, e.g., CTL Ex. 36 at “Spare T3-CSG Circuit Research” Tab, Row 3 (alleging that Verizon should not have provisioned 8020 T3Z WASHDCSWK36 WASIDCRGW01), with CTL Ex. 44.03e at “Data” Tab, Row 2315 (showing that Verizon billed qualifying charges for that circuit for December 2014).

have billed for those circuits in the first place.³³⁵ The proper way for CenturyLink to have raised that claim was to file business-as-usual disputes challenging Verizon’s charges on its monthly bills within 30 days of the end of the quarter.³³⁶ Once it missed that deadline, however, the charges were “included in calculation of the Billing Credits” and so could “not be subject to any claims or disputes by [CenturyLink] at any time in the future.”³³⁷

The vast majority of CenturyLink’s network-optimization disputes were untimely under that framework because CenturyLink submitted them more than 30 days after the end of the quarter in question.³³⁸ And, even for the minority of disputes that were timely,³³⁹ CenturyLink failed to label its claims as a “Dispute Associated with 2014 Contract Tariff,” as the 2014 Service Agreement required.³⁴⁰ That labeling requirement was not merely pro forma; it served to notify Verizon of the disputed charges to be excluded from the quarterly Billing Credit calculations.³⁴¹ Because CenturyLink failed to give Verizon such notice about its network-optimization disputes, Verizon did not exclude those disputes when calculating the quarterly Billing Credits for PY2Q2 and PY2Q3.³⁴² CenturyLink thus agreed to Billing Credits

³³⁵ Cf. CenturyLink’s Legal Analysis at 24 (arguing that these disputes do not go to “calculation of the Billing Credits” but instead “Verizon’s threshold tariff and contract violations of not properly optimizing or categorizing circuits”).

³³⁶ See 2014 Service Agreement, Ex. B § 8(c).

³³⁷ *Id.* § 8(e).

³³⁸ See Szol Decl. ¶¶ 56-58 & Tbl. 1.

³³⁹ See Szol Decl. ¶ 57 & Tbl. 1 (shading in yellow the timely disputes).

³⁴⁰ See Szol Decl. ¶ 58; 2014 Service Agreement, Ex. B § 8(c).

³⁴¹ See Szol Decl. ¶ 58.

³⁴² VZ Ex. 11.1 (attachment to PY2Q2 Step 3 email showing that the circuit IDs for the underlying charges the parties agreed were disputed do not match the circuit IDs for the charges CenturyLink disputed on September 30, 2015); VZ Ex. 12 (PY2Q3 Step 3 email showing that, although Verizon did not have the individual circuit IDs that were disputed, the parties agreed on approximately [[BEGIN CONFIDENTIAL]] [REDACTED])

predicated on the very circuits for which it now challenges Verizon’s charges, without ever mentioning its network-optimization disputes. The Service Agreements bar those disputes.³⁴³

III. CENTURYLINK’S CLAIMS ARE BARRED IN PART BY THE APPLICABLE STATUTE OF LIMITATIONS

A. CenturyLink’s Claims Concerning Plan Year 5 Are Time-Barred Under 47 U.S.C. § 415(b)

CenturyLink’s claims concerning Plan Year 5 of the 2009 Service Agreement (covering the period from March 2013 through February 2014) are barred by § 415(b)’s two-year statute of limitations. That section governs all claims for damages except those based on “overcharges,” which are defined as “charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission.”³⁴⁴ As the Commission has observed, the two-year statute of limitations is “not discretionary” but is instead “a statute of repose, designed to protect a potential defendant against stale and vexatious claims by ending the possibility of litigation after a reasonable period of time has elapsed.”³⁴⁵

The two-year bar in § 415(b) precludes CenturyLink’s claims based on Billing Credits issued in Plan Year 5. Those claims accrued when Verizon notified CenturyLink of the final credit amount, because at that point CenturyLink discovered, or with due diligence should have discovered, its claim that Verizon allegedly miscounted the units in determining the Billing Credits.³⁴⁶ Those accrual dates were as follows: July 25, 2013 (PY5Q1), October 25, 2013

████████████████████ **[[END CONFIDENTIAL]]** worth of disputes CenturyLink submitted for PY2Q3 on September 30, 2015, and October 29, 2015).

³⁴³ See 2014 Service Agreement, Ex. B § 8(e).

³⁴⁴ 47 U.S.C. § 415(g).

³⁴⁵ Memorandum Opinion and Order, *Bunker Ramo Corp. v. Western Union Tel. Co.*, 31 F.C.C.2d 449, ¶ 12 (1971).

³⁴⁶ See *Sprint Commc’ns Co. v. FCC*, 76 F.3d 1221, 1226 (D.C. Cir. 1996).

(PY5Q2), January 29, 2014 (PY5Q3), and May 9, 2014 (PY5Q4).³⁴⁷ Because all were more than two years before CenturyLink filed its Informal Complaint,³⁴⁸ these claims are time-barred.

CenturyLink tries to avoid that conclusion by characterizing all of its claims as ones for “overcharges” under § 415(c), which would allow CenturyLink to extend the accrual date by presenting its claims in writing to Verizon.³⁴⁹ That argument fails for two reasons.³⁵⁰ First, CenturyLink’s challenges to the Billing Credits do not claim that Verizon charged CenturyLink “in excess” of the appropriate monthly rate under its tariffs.³⁵¹ Rather, CenturyLink alleges that Verizon should not have counted certain “units” in calculating the Billing Credits, which would have resulted in larger credit payments (in essence, rebates) back to CenturyLink. A claim for rebates is not the same as a claim that Verizon overcharged CenturyLink in the first instance. Whereas the latter is subject to § 415(c), the former is subject to § 415(b).³⁵²

Second, even leaving that aside, CenturyLink’s claims are subject to § 415(b) because they allege that Verizon improperly levied “charges [that] were not applicable, rather than . . .

³⁴⁷ See Credit History Chart at PY5Q1 – PY5Q4.

³⁴⁸ See Compl. ¶ 20 (Informal Complaint filed on June 17, 2016).

³⁴⁹ See 47 U.S.C. § 415(c) (“if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended”).

³⁵⁰ Verizon acknowledges that CenturyLink’s Category 6 disputes are for overcharges and are governed by § 415(c). CenturyLink did not file any claims in Category 6 for PY5Q1 – PY5Q4. See Compl. ¶ 36, Tbl. 3.

³⁵¹ 47 U.S.C. § 415(g).

³⁵² The cases CenturyLink cites (Legal Analysis at 6 n.16) are far afield. Those cases do not even address the Act, much less the meaning of “overcharge” in § 415(g). See *National Carloading Corp. v. United States*, 221 F.2d 81, 82-83 (D.C. Cir. 1955) (per curiam) (addressing a government shipping dispute brought by a “freight forwarder”); *Union Pac. R.R. Co. v. United States*, 524 F.2d 1343, 1358-59 (Ct. Cl. 1975) (addressing railroad’s accounting treatment of stock acquisition).

charges [that] were in excess of lawfully filed levels.”³⁵³ Specifically, CenturyLink claims that Verizon should not have counted certain circuits as “units” *at all* in calculating the Billing Credits – rather than claiming that Verizon billed those circuits out at an excessive rate. Such a claim does not seek “overcharges” as that term is used in § 415(c).³⁵⁴

B. Any Claims Asserting That Verizon Delayed In Paying The Billing Credits Are Independently Barred

To the extent CenturyLink asserts a claim based on Verizon’s alleged failure to pay Billing Credits within 60 days of the end of the quarter, such claims are also barred. Any such claims concerning all quarters up through and before PY2Q3 are barred by the two-year statute of limitations in § 415(b). Those claims accrued once 60 days elapsed after each quarter, because by that point CenturyLink was aware that Verizon had not paid the credits within 60 days. The latest that any such claims accrued as to quarters up through and before PY2Q3 was January 29, 2016.³⁵⁵ Further, CenturyLink’s Informal Complaint contained no allegation about any supposed breach of a 60-day deadline. Therefore, these claims – to the extent CenturyLink

³⁵³ Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic – Pennsylvania*, 14 FCC Rcd 556, ¶ 17 (1998).

³⁵⁴ *See id.* (distinguishing between claims that carrier billed charges “in cases where the charges were not applicable” and overcharge claims alleging “that those charges were in excess of lawfully filed levels”); *Communications Vending Corp. of Arizona, Inc. v. FCC*, 365 F.3d 1064, 1073 (D.C. Cir. 2004) (affirming the Commission’s application of § 415(b) to claims that plaintiffs were not subject to end-user charges because plaintiffs were not end users).

³⁵⁵ *See* Compl. ¶ 78 (PY2Q3 ended on November 30, 2015; 60 days after that date was January 29, 2016).

even alleges them³⁵⁶ – do not relate back to the Informal Complaint.³⁵⁷ Because any such claims arose more than two years before CenturyLink’s Formal Complaint, they are time-barred.

Finally, CenturyLink is barred from recovering any damages relating to any delay in Verizon’s payment of the Billing Credits. Those delays were attributable to CenturyLink’s own conduct in declining to concur in those credits in a timely fashion.³⁵⁸ And, more fundamentally, the Service Agreements preclude any claim for “late payment, interest or penalty” relating to Verizon’s issuance of the Billing Credits.³⁵⁹ The Bureau should enforce those provisions.³⁶⁰

CONCLUSION

For the reasons set forth above, and as further explained in Verizon’s Answer, CenturyLink’s Formal Complaint should be dismissed in its entirety with prejudice.

³⁵⁶ Verizon does not concede or otherwise imply that CenturyLink has properly alleged a breach of any payment deadline.

³⁵⁷ To relate back to the filing of the Informal Complaint, the Formal Complaint must be “based on the same cause of action as the informal complaint.” 47 C.F.R. § 1.718.

³⁵⁸ See Mason Decl. ¶¶ 52-55.

³⁵⁹ 2009 Service Agreement, Ex. B § 7(e)(viii); 2014 Service Agreement, Ex. B § 8(g).

³⁶⁰ See *Ryder Order* ¶¶ 23-28 (enforcing contract tariff restrictions).

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Attorneys for Verizon

April 12, 2018

Tab B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C., Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

**VERIZON’S RESPONSE TO CENTURYLINK’S
SUMMARY OF GOVERNING AGREEMENTS**

Defendants (individually and collectively, “Verizon”), pursuant to 47 C.F.R. § 1.724(b) and the Enforcement Bureau’s February 9, 2018 and March 13, 2018 letter rulings¹, submit this response to the Summary of Governing Agreements attached (as Tab B) to the Formal Complaint (“Complaint” or “Compl.”) filed by CenturyLink Communications, LLC (“CenturyLink”) on February 26, 2018. Verizon states as follows:

¹ See Notice of Formal Complaint (Mar. 13, 2018); Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, to Brendon P. Fowler, Counsel for CenturyLink, and Curtis L. Groves, Counsel for Verizon (Feb. 9, 2018).

[I. AGREEMENT STRUCTURE]²

1. Verizon admits that the parties executed a 2006 Master Services Agreement (“MSA”), various attachments thereto, a 2009 Service Agreement,³ and a 2014 Service Agreement.⁴ Verizon admits that the MSA is composed of its terms, its attachments, and associated tariffs. Verizon denies that the MSA governed the parties’ Price Flex Deal. The MSA provided a general framework through which Verizon provided certain services (such as Ethernet) which the Commission has forbore from regulating⁵ – sometimes called “forbearance services.”⁶ But the MSA did not govern tariffed DS1 and DS3 services; those services were instead governed by the 2009 and 2014 Service Agreements and associated contract tariffs. Neither of those Agreements was designated as an attachment to the MSA.⁷ Thus, while CenturyLink is correct that the MSA “provided for a dispute process and claims submission procedure,”⁸ that process was inapplicable to Verizon’s calculation of the quarterly Billing Credits for tariffed special-access services under the 2009 and 2014 Service Agreements.⁹

2. Verizon admits that Attachment 2 to the MSA set forth pricing and terms governing Verizon’s provision of Ethernet services to CenturyLink. Verizon also admits that

² For ease of reference, Verizon repeats CenturyLink’s headings from its Summary of Governing Agreements. By doing so, Verizon does not admit that these headings are appropriate or accurate.

³ See CTL Ex. 3 (“2009 Service Agreement”).

⁴ See CTL Ex. 5 (“2014 Service Agreement”).

⁵ See, e.g., CTL Ex. 1, MSA § 1 (applying to services described in “Attachments” to the MSA itself); CTL Ex. 6, MSA Att. 2 § 1.1 (governing Ethernet service); *see generally* 47 U.S.C. § 160.

⁶ See Decl. of Christopher Alston ¶¶ 3-4 (“Alston Decl.”).

⁷ See *id.* ¶ 7.

⁸ See MSA § 11.

⁹ Compare MSA § 11.3 (dispute process governing charges **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**), with 2009

Attachment 2 to the MSA provided that CenturyLink was eligible for the Ethernet pricing set forth therein only so long as it subscribed to the Price Flex Deal for tariffed special-access services.¹⁰ Verizon denies that the Service Agreements and Attachment 2 were any more broadly “intertwined” than that. The 2009 and 2014 Service Agreements made no reference to the MSA or Attachment 2, and both contained integration clauses stating that “[t]his Agreement (including all attachments and exhibits attached hereto), the Contract Tariffs and all applicable Tariffs constitute the entire agreement between the parties”¹¹

3. Verizon admits the allegations in Paragraph 3.

4. Verizon admits that, under the 2009 Service Agreement, it delivered discounts to CenturyLink on qualifying DS1 and DS3 services by paying quarterly Billing Credits.¹² The Billing Credits were calculated as the difference between (1) the undisputed amounts that CenturyLink paid at Verizon’s standard monthly tariffed rates during the applicable quarter; and (2) the discounted amounts that were calculated by multiplying the number of “units” in each service type by the corresponding “flat rates” specified in the Service Agreements.¹³ Verizon denies that the provision of a “rate discount” was the 2009 Service Agreement’s sole purpose. Verizon provided that discount in exchange for valuable “consideration” of its own: that CenturyLink “agree[] to abide by the requirements” set forth in the Service Agreement, including

Service Agreement, Ex. B § 7(e)(vii) (“The Billing Credits as determined by Verizon are not subject to dispute.”); *and* 2014 Service Agreement, Ex. B § 8(f) (same).

¹⁰ *See* CTL Ex. 11 (“MSA Att. 2 6th Amendment”) § 2. The term “Price Flex Deal” refers to the arrangement by which Verizon provided discounted DS1 and DS3 special-access services to CenturyLink pursuant to the Service Agreements and contract tariffs. *See id.*

¹¹ 2009 Service Agreement § 6(h); 2014 Service Agreement § 6(h).

¹² 2009 Service Agreement, Ex. B § 7.

¹³ *See id.*, Ex. B § 7(a)-7(d).

(but not limited to) minimum revenue commitments and the dispute-resolution requirements that governed Verizon’s determination of the quarterly Billing Credits.¹⁴

5. Verizon admits the allegations in Paragraph 5, except denies that the dispute-resolution process set forth in Attachment 11 to the MSA was intended to govern disputes of Verizon’s calculation of the quarterly Billing Credits. Although Attachment 11 sets forth

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]¹⁵ the quarterly

Billing Credits were specifically “not subject to dispute” and so were not subject to the dispute-resolution procedures set forth in the MSA and its Attachments.¹⁶

6. Verizon admits the allegations in Paragraph 6.

7. Verizon admits the allegations in Paragraph 7. As with the 2009 Service Agreement, Verizon offered flat-rate pricing under the 2014 Service Agreement in exchange for valuable “consideration,” including CenturyLink’s revenue commitments and agreement to abide by the restrictions on its ability to dispute the quarterly Billing Credits.¹⁷

8. Verizon admits the allegations in Paragraph 8, except denies that the dispute-resolution process set forth in Attachment 13 to the MSA was intended to govern disputes to Verizon’s calculation of the quarterly Billing Credits. Although Attachment 13 sets forth

[[BEGIN CONFIDENTIAL]]

¹⁴ *Id.*, Ex. B § 1; *see id.*, Ex. B §§ 3(a) (minimum volume commitments), 7(e)(vii) (dispute provisions), 15 (watermark provisions allowing Verizon to terminate for failure to meet revenue commitments).

¹⁵ CTL Ex. 2 (“MSA Att. 11”) § 15.

¹⁶ 2009 Service Agreement, Ex. B § 7(e)(vii).

¹⁷ *See* 2014 Service Agreement, Ex. B §§ 1, 3(a), 7(h), 8.

[[END CONFIDENTIAL]]¹⁸ the quarterly Billing Credits were specifically “not subject to dispute” and so were not subject to the general dispute-resolution process provided for in the MSA.¹⁹

[II. CONTRACTUAL DISPUTE PROVISIONS]

9. Verizon admits that the 2009 and 2014 Service Agreements had an **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** with MSA Attachments 11 and 13, respectively.²⁰ Both MSA Attachments contemplated that CenturyLink could purchase some Ethernet services as a substitute for some DS1 and DS3 services; the Attachments therefore allowed CenturyLink to allocate its spend on Ethernet services towards the minimum special-access revenue commitments in the Price Flex Deal.²¹ MSA Attachment 13 also provided for a quarterly **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[[REDACTED]]] **[[[END CONFIDENTIAL]]]**²² Verizon’s DS1 and DS3 “unit” counts under the Service Agreements provided one important input into the TDM Surcharge formula.²³ But the Attachments did not abolish the distinction between non-tariffed Ethernet services and tariffed special-access services, nor did they free CenturyLink from the dispute

¹⁸ CTL Ex. 4 (“MSA Att. 13”) § 9.4.

¹⁹ 2014 Service Agreement, Ex. B § 8(f).

²⁰ MSA Att. 11 § 15; MSA Att. 13 § 9.4.

²¹ See MSA Att. 11 § 4; MSA Att. 13 §§ 5-6; *see also* Alston Decl. ¶ 6.

²² See MSA Att. 13 § 6.1.1 (explaining TDM Surcharge calculation).

²³ See *id.* (providing that TDM Surcharge calculation depends on TDM Attainment Revenue); *id.* § 5.1 (providing that TDM Attainment Revenue depends on number of DS1 and DS3 “Units” under the Price Flex Deal).

structure that the Service Agreements imposed on the quarterly Billing Credits for special-access services..²⁴

10. Verizon admits the allegations in Paragraph 10.

11. Verizon admits that the MSA states that **[[BEGIN CONFIDENTIAL]]**

CONFIDENTIAL]] **[[END**

CONFIDENTIAL]].²⁵ Verizon denies that this provision applied to the payment of Billing Credits under the Service Agreements..²⁶ Verizon further denies that Verizon’s conduct hampered (materially or otherwise) CenturyLink’s “ability to detect and dispute” the alleged billing errors at issue..²⁷

[III. QUALIFYING MONTHLY RECURRING CHARGES]

12. Verizon admits the allegations in Paragraph 12 except for the last sentence. The 2009 Service Agreement and associated contract tariffs did not “restrict[]” Verizon to “billing for specific classes and USOCs” Rather, the 2009 Service Agreement and contract tariffs identified specific classes of service and USOCs that were eligible for flat-rate discounts and

²⁴ Compare 2009 Service Agreement, Ex. B § 7(e)(vii); and 2014 Service Agreement, Ex. B § 8(f) (barring CenturyLink from disputing Billing Credits), with MSA Att. 13 § 9 (applying MSA dispute provisions to **[[BEGIN CONFIDENTIAL]]** **CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**); and *id.* § 3 (defining those terms as distinct from quarterly credits under Price Flex Deal).

²⁵ MSA § 11.3.

²⁶ See *id.* (applying to **[[BEGIN CONFIDENTIAL]]** **CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**).

²⁷ See, e.g., Verizon’s Answer ¶¶ 3, 73-75.

quarterly credits.²⁸ Verizon was allowed to bill for other, non-qualifying services at standard rates.

13. Verizon admits that, under the 2014 Service Agreement and associated contract tariffs, circuits could be counted as “units” only if they billed a “Qualifying [Monthly Recurring Charges (“MRC”)]” as defined in the contract.²⁹ Verizon denies the remaining allegations in Paragraph 13 for the reasons set forth in its Answer.

Dated: April 12, 2018

Respectfully submitted,



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²⁸ See 2009 Service Agreement, Ex. B § 7.

²⁹ See 2014 Service Agreement, Ex. B § 6.

Tab C

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C. Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

DECLARATION OF PATRICIA A. MASON

I, Patricia A. Mason, being above 18 years of age and competent to make this declaration, hereby submit this declaration in support of Verizon. I declare that:

1. I am a Senior Analyst in the Marketing Operations Group for Verizon. I have been employed by Verizon or its predecessors for more than 20 years. Since 2006, I have worked for Verizon Partner Solutions, where my responsibilities have focused on Verizon’s provision of wholesale services to other telecommunications companies. From February 2010 through February 2017, I was personally involved in Verizon’s provision of special-access services to CenturyLink, including by calculating quarterly Billing Credits remitted to CenturyLink and communicating regularly with CenturyLink about those credits. Based on that experience in the everyday performance of my duties, I developed an extensive familiarity with

the details of the Price Flex Deal and the process the parties used to calculate the quarterly Billing Credits. I have personal knowledge of the facts set forth below.

I. The Price Flex Deal and the Quarterly Billing Credits

2. The Price Flex Deal refers to the arrangement by which Verizon provided discounted DS1 and DS3 special-access services to CenturyLink pursuant to a negotiated contract and associated contract tariffs.¹ The Price Flex Deal reflected a basic exchange between the parties: CenturyLink received steeply discounted flat-rate pricing on DS1 and DS3 circuits, and in exchange Verizon received total revenue commitments and protection against disputes.

3. CenturyLink's subscription to the Price Flex Deal began in 2009 and was governed for five years by the 2009 Service Agreement and associated contract tariffs.² The 2009 Service Agreement expired on February 28, 2014 and was replaced by a new 2014 Service Agreement that took effect on March 1, 2014 and expired on February 28, 2017.³

4. Under the Price Flex Deal, Verizon delivered discounted special-access pricing to CenturyLink by paying quarterly Billing Credits. Broadly speaking, the Billing Credit each quarter represented the difference between (a) the total monthly charges CenturyLink had paid at Verizon's standard tariffed rates for qualifying services; and (b) the smaller amounts that

¹ See CenturyLink Exhibit ("CTL Ex.") 4 ("MSA Att. 13") § 1 (defining "Price Flex Deal").

² See CTL Ex. 3 ("2009 Service Agreement"), Ex. B § 4.

³ See *id.* Ex. B § 4; CTL Ex. 5 ("2014 Service Agreement"), Ex. B § 4. Both Agreements were implemented in substantial part through contract tariffs filed with the Commission. See 2009 Service Agreement § 3(a) (Exhibit B to the 2009 Service Agreement was filed as a contract tariff and appeared at Verizon FCC Tariff No. 1 § 21, Option 57; Verizon FCC Tariff No. 11 § 32, Option 55; and Verizon FCC Tariff No. 14 § 21, Option 29); 2014 Service Agreement § 3(a) (Exhibit B to the 2014 Service Agreement was filed as a contract tariff and appeared at Verizon FCC Tariff No. 1 § 21, Option 65; Verizon FCC Tariff No. 11 § 32, Option 65; and Verizon FCC Tariff No. 14 § 21, Option 34).

CenturyLink would have owed for those same services had they been charged at the discounted flat rates specified in the Service Agreements. By first billing CenturyLink at standard tariffed rates on a monthly basis and then remitting the Billing Credits at the end of the quarter, Verizon reduced CenturyLink's effective rate to the low "flat rates" specified in the Agreements.

5. Verizon's discounted pricing applied to three types of special-access services: DS1 circuits, DS3 CLF (multiplexed) circuits, and DS3 CLS (point-to-point) circuits. Determining the Billing Credits on those services each quarter involved four basic calculations. First, Verizon summed up the monthly revenue it had billed for qualifying services – that is, the charges that CenturyLink had paid for special-access circuits at Verizon's standard monthly rates. Second, Verizon tabulated the number of qualifying "units" (by counting circuits for DS3 service, and channel terminations for DS1 service) in each category. Third, Verizon multiplied each "unit" count by the applicable "flat rate" set out in the contract.⁴ Fourth, Verizon took the sum of those products ("unit" count times applicable flat rate for each service type) and subtracted the total from the monthly revenue number calculated at step one above. The difference between those two numbers was the "Billing Credit."

6. Since the inception of the Price Flex Deal, Verizon's consistent practice was to pay a quarterly Billing Credit only after CenturyLink had reviewed Verizon's calculations and fully concurred in Verizon's proposed credit amount. Verizon adhered to this practice in part

⁴ The 2009 Service Agreement specified three separate flat rates, which changed yearly:
 [[BEGIN CONFIDENTIAL]]

[REDACTED]

CONFIDENTIAL]]

[[END

because it understood the Service Agreements to bar CenturyLink from disputing the credit amounts once paid. Because CenturyLink could not raise after-the-fact disputes to the Billing Credits, Verizon took steps to ensure that CenturyLink had advance notice of those credits each quarter and an opportunity to evaluate Verizon’s calculations before agreeing to them. The 2014 Service Agreement codified this arrangement by making clear that “Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by Customer.”⁵

7. The Price Flex Deal, and the quarterly Billing Credits, were intertwined with several other agreements under which Verizon provided non-tariffed data services to CenturyLink. Those agreements imposed overall revenue commitments on CenturyLink that encompassed multiple types of services, including special-access and Ethernet services.⁶ The number of special-access “units” CenturyLink purchased was one key input into the formula by which Verizon calculated CenturyLink’s progress toward its overall annual commitments. I tracked CenturyLink’s Ethernet spending – and its progress towards its annual commitments – in the same reports that I used to calculate the Billing Credits under the Price Flex Deal. Under the 2014 plan, these calculations included the TDM Surcharge calculation, which was designed to ensure that CenturyLink was meeting its overall revenue commitments across various service types.⁷ The TDM Surcharge – though itself governed by an Attachment to the parties’ Master Services Agreement – depended on (among many other things) the number of DS1 and DS3 “units” that CenturyLink had purchased under the 2014 Service Agreement.⁸

⁵ 2014 Service Agreement, Ex. B § 8(f).

⁶ See CTL Ex. 2 (MSA Att. 11); MSA Att. 13.

⁷ See, e.g., CTL Ex. 45.05a Tab “Summary,” Row 168 (tracking “TDM Attainment Revenues” for March-May 2015).

⁸ See MSA Att. 13 §§ 5.1, 6.1.1.

8. Verizon administered the Price Flex Deal by Plan Year and by Quarter.⁹ Each Plan Year ran from March 1 through February 28. The parties commonly abbreviated each quarter using the acronym “PY_Q_,” where PY1Q2, for example, meant the second quarter of Plan Year 1. Table 1 below illustrates the dates that corresponded to each quarter and Plan Year, beginning with PY5Q1 (which is when CenturyLink’s claims start).

Table 1: Plan Years and Quarters

Applicable Plan	Quarter	Dates
2009 Plan	PY5Q1	Mar. 2013 – May 2013
	PY5Q2	June 2013 – Aug. 2013
	PY5Q3	Sept. 2013 – Nov. 2013
	PY5Q4	Dec. 2013 – Feb. 2014
2014 Plan	PY1Q1	Mar. 2014 – May 2014
	PY1Q2	June 2014 – Aug. 2014
	PY1Q3	Sept. 2014 – Nov. 2014
	PY1Q4	Dec. 2014 – Feb. 2015
	PY2Q1	Mar. 2015 – May 2015
	PY2Q2	June 2015 – Aug. 2015
	PY2Q3	Sept. 2015 – Nov. 2015
	PY2Q4	Dec. 2015 – Feb. 2016
	PY3Q1	Mar. 2016 – May 2016
	PY3Q2	June 2016 – Aug. 2016
	PY3Q3	Sept. 2016 – Nov. 2016
	PY3Q4	Dec. 2016 – Feb. 2017

9. Each quarter, Verizon calculated and paid the Billing Credit – only in amounts to which CenturyLink had expressly agreed – by following the six-step process set forth below.

10. **Step #1: Monthly Billing.** The first step in the credit-calculation process was for Verizon to send CenturyLink monthly invoices assessing charges for special-access service at standard tariffed rates. Verizon sent a separate invoice to CenturyLink for each of its Billing Account Numbers (“BANs”), which roughly lined up with various CenturyLink operating

⁹ See 2009 Service Agreement, Ex. B § 2; 2014 Service Agreement, Ex. B § 2(w).

companies. Each CenturyLink BAN had a different month-long billing cycle, and Verizon typically billed CenturyLink at the beginning of that cycle – thus, for instance, if a BAN had a billing cycle that ran from March 15 through April 14, Verizon would send the invoice for that month on March 15. The invoice had two components: a bill (providing basic information about Verizon’s charges) and a Customer Service Record (“CSR,” providing detailed information for each charge). Verizon sent the invoices electronically so that CenturyLink could load the underlying information into its own electronic system. These documents gave CenturyLink a complete readout – including circuit IDs, classes of service, USOCs, and a host of other information – about every special-access circuit that it purchased from Verizon.

11. **Step #2: Monthly Reporting.** Shortly after the end of each month, I sent CenturyLink a courtesy Monthly Tracking Report. I typically sent this report via email to Anne Grimm (while copying others), who worked in Carrier Management for CenturyLink and who was my primary point-of-contact with respect to the Price Flex Deal. The Monthly Tracking Reports gave CenturyLink an in-progress calculation of the quarterly Billing Credit through the end of the prior month. There were multiple pieces to this disclosure:

- a. Summary Tab: The “Summary” tab on each Monthly Tracking Report contained a row entitled “Credit Due Under Contract Tariff.” This row gave CenturyLink a top-line number representing Verizon’s current calculation of the Billing Credit owed for the month’s qualifying special-access services.¹⁰ It also contained information about CenturyLink’s Ethernet usage and progress toward its overall revenue commitments.¹¹
- b. Monthly Detail Tab: The Monthly Tracking Reports also contained additional detail tabs describing Verizon’s credit calculations for the month in question. The pertinent information appeared under the header “Credits Due Under Contract Tariff.” For each service type, this tab disclosed Verizon’s

¹⁰ See CTL Ex. 40.08a Tab “Summary,” Cell C7 (December 2013 Monthly Tracking Report).

¹¹ See *id.* Tab “Summary,” Rows 28-37.

standard tariffed revenue and the associated “unit” count.¹² By multiplying the latter number by the applicable flat rate and then subtracting it from the revenue number, Verizon arrived at the credit amount for each service type.

- c. Other Months: The Monthly Tracking Reports also contained detail tabs for the other months in the applicable quarter. Future months would be left blank, to be filled in later; older months would repeat the detail contained in prior Monthly Tracking Reports. For example, the December 2013 Monthly Tracking Report (for PY5Q4, covering December 2013 through February 2014) contained detail for December 2013 and had blank tabs for January and February 2014. I filled in those blank tabs in subsequent monthly reports.

12. I sent CenturyLink one of these Monthly Tracking Reports each month, typically within two-to-four weeks of the end of the month. By the end of the quarter’s third month, the Monthly Tracking Report (at this point containing data for all three months) provided Verizon’s preliminary calculation of the total quarterly Billing Credit. I also occasionally provided circuit-level detail – that is, information broken down to the level of each individual special-access circuit – in connection with these Monthly Tracking Reports. The circuit-level detail derived from the monthly invoices, which CenturyLink received every month. For example, in PY5Q4, I sent the third Monthly Tracking Report (for February 2014) to CenturyLink on March 14, 2014. The next business day, on March 17, Ms. Grimm responded by asking for the “DS3 report,” which meant the circuit-level DS3 report I typically sent at Step 4 below (*see infra* ¶¶ 15-20).¹³ A few hours later, I provided this “detail information for PY5Q4” and sent Ms. Grimm the requested DS3 circuit-level report.¹⁴ As this example illustrates, I generally sent CenturyLink

¹² *See, e.g.*, CTL Ex. 40.08a (example of Monthly Tracking Report under the 2009 Service Agreement, for December 2013); CTL Ex. 46.07a (example of Monthly Tracking Report under the 2014 Service Agreement, for June 2015).

¹³ CTL Ex. 40.09 at 1.

¹⁴ *Id.* (email transmitting the additional detail); *see* CTL Ex. 40.09a (DS3 circuit-level report attached to email); CTL Ex. 40.09b (DS3 detail report attached to email).

whatever credit-related information it requested, and had CenturyLink asked for additional circuit-level information at any time, I would have happily provided it.

13. **Step #3: Dispute Reconciliation.** My next step in the process was to deduct disputed charges from the credit calculation. Under the Price Flex Deal, Verizon provided the flat-rate discount only on *undisputed* charges that CenturyLink had fully paid.¹⁵ This was in accord with the principles of certainty and finality that Verizon understood the Service Agreements to promote. Once Verizon issued the Billing Credit for a quarter, it intended the books to be closed on that quarter, with no risk that the parties would later have to revisit the credit amounts. In addition, excluding disputed amounts from the Billing Credits protected Verizon from giving CenturyLink a windfall in the form of discount credits rebated to CenturyLink on charges that it ultimately did not pay. Were it otherwise, CenturyLink might be able to pay a monthly charge for a special-access circuit, file a dispute as to that charge, collect a Billing Credit on the underlying circuit (in effect rebating to CenturyLink the difference between Verizon's standard charge and the agreed-upon flat rate), and then prevail on its dispute and recover the entire amount it initially paid – while also keeping the credit. To avoid such windfalls, Verizon took an inventory of all the special-access disputes that were open 30 days after the end of each quarter and irrevocably excluded them from the quarterly credit amounts.

14. In keeping with Verizon's general philosophy of obtaining customer concurrence, Verizon's practice was to seek agreement from CenturyLink on the open-dispute amounts before subtracting those amounts from the quarterly Billing Credit. Thus, at Step 3 of the process,

¹⁵ See 2009 Service Agreement, Ex. B § 7(e)(i) ("Verizon shall not include in the calculation of the Billing Credits any amounts which are unpaid and/or disputed by Customer as of the thirtieth (30th) day following the end of each Quarter."); 2014 Service Agreement, Ex. B § 8(a) (same).

Verizon's dispute team (typically led by Joseph Aguilar) would work with CenturyLink's dispute team (typically led by Joseph Romero) to reach consensus on the total amount of special-access charges for which there were open disputes.¹⁶ Once the parties had reached agreement on the amount of those open disputes, I deducted the open-dispute amounts from the preliminary credit amount I had sent in connection with the third Monthly Tracking Report at Step 2. As a matter of practice, and based on my understanding of the Service Agreements, I did not proceed to the next step until CenturyLink had provided concurrence on these dispute amounts.

15. **Step #4: Revised Credit Calculation.** Upon receiving notice that the parties had agreed on the open-dispute amounts, I promptly updated the Tracking Report to deduct those disputes from the credit amount and emailed the revised numbers to Ms. Grimm. At this point, in addition to the updated Tracking Report, I also typically sent Ms. Grimm a reporting package that contained circuit-level detail underpinning the credit calculations. Occasionally, if I had already sent the detail files at Step 2 (such as in PY5Q4, *see* CTL Ex. 40.09), I would not re-send the same files in connection with the revised credit calculations.¹⁷ But my typical practice was to send circuit-level detail files in connection with these revised credit calculations.

16. The revised Tracking Report contained the same information as the standard Monthly Tracking Reports (*see supra* ¶ 11) but also subtracted out the dispute amounts.¹⁸ The detail files that I also typically sent along with this revised credit calculation varied between the 2009 plan and the 2014 plan. Under the 2009 plan, I generally sent two detail files with the

¹⁶ *See, e.g.*, VZ Ex. 3 (7/25/13 email chain ending from Romero); VZ Ex. 5 (10/15/13 email chain ending from Aguilar).

¹⁷ *See, e.g.*, VZ Ex. 4 (9/17/13 email from Mason transmitting August 2013 report).

¹⁸ *See, e.g.*, CTL Ex. 45.05a Tab "Summary," Cell G41 (PY2Q1 Tracking Report deducting **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** in disputes from the Billing Credit).

revised Tracking Report: a revenue file (typically called “DS1_DS3_FMS MRC”) and a DS3 circuit file (typically called “DS3 CLF_CLS Billed Units”). Both detail files derived from monthly invoices that CenturyLink had received. The revenue file tallied up the billed revenue that Verizon had charged on qualifying circuits during the quarter and broke that revenue into three categories: DS1, DS3, and FMS.¹⁹ The DS3 circuit file contained full circuit-level detail for the DS3 CLF and CLS circuits that Verizon had counted as a “unit” for the quarter.²⁰ The first tab contained the total “unit” count for the quarter, broken out by month and service type.²¹ The second tab contained the circuit-level detail. Column L of that tab listed each DS3 circuit ID, and column AU listed whether Verizon was counting the circuit as a “unit.”²² The same tab provided a wealth of additional information about each circuit, including the applicable Billing Account Number and the circuit’s class of service.²³

17. I did not typically send a report containing circuit-level detail for DS1s under the 2009 plan because CenturyLink never asked for one. I also believed that DS1 circuit-level detail was less important than DS3 circuit-level detail because Verizon counted DS1 “units” by channel termination rather than by circuit ID. Had CenturyLink requested such a report, I would have sent one. However, CenturyLink did not need a DS1 detail file to evaluate the proposed credit. CenturyLink’s monthly invoices provided it with a wide array of information about all of its DS1 circuits, and it could have used that information to calculate its own DS1 “unit” count and compare it to Verizon’s count, which I disclosed on a monthly basis.

¹⁹ See, e.g., CTL Ex. 40.09a (example revenue report for PY5Q4).

²⁰ See, e.g., CTL Ex. 40.09b (example DS3 report for PY5Q4).

²¹ See *id.*

²² See *id.* Tab “Centurylink DS3 CLS_CLF Billed.”

²³ See *id.* Tab “Centurylink DS3 CLS_CLF Billed,” Cols. I (BAN) and K (class of service).

18. Under the 2014 plan, the detail files that I typically sent alongside the revised credit calculations included a dispute report, a revenue file, a DS1 report, and a DS3 report. The dispute report itemized and quantified the total open disputes that Verizon had deducted from the credit amounts.²⁴ The revenue file – typically entitled “CenturyLink TBR” (for Total Billed Revenue) – tallied up the billed revenue that Verizon had charged on qualifying circuits during the quarter, which provided support for the first component of the credit calculation.²⁵ The DS1 report provided the total DS1 “unit” count (by channel terminations) for each DS1 circuit without mileage,²⁶ as well as underlying circuit-level detail disclosing the supporting circuit IDs and their associated channel terminations.²⁷ I included this report under the 2014 plan (but not under the 2009 plan) because the 2014 Service Agreement treated DS1s without mileage as a separate “unit” category with a separate flat rate.²⁸ I did not typically send a report containing circuit-level detail for DS1s with mileage because CenturyLink never asked for one. Had CenturyLink requested such a report at any time, I would have happily sent one. CenturyLink also received monthly invoices detailing mileage charges associated with individual DS1 circuit IDs, from which CenturyLink could have calculated its own DS1 “unit” counts.

19. The DS3 report contained full circuit-level detail for the DS3 CLS and DS3 CLF circuits that Verizon was counting as “units” under the Price Flex Deal for the quarter. The first tab contained the total “unit” count for the quarter, broken out by month and service type.²⁹ The

²⁴ See, e.g., CTL Ex. 45.05e (report detailing open disputes for PY2Q1).

²⁵ See, e.g., CTL Ex. 45.05b (revenue report for PY2Q1).

²⁶ See, e.g., CTL Ex. 45.05d Tab “PY2Q1 DS1 wo miles pivot” (describing total unit count for DS1 units without miles).

²⁷ See, e.g., *id.* (disclosing circuit IDs and, in “Count” column, the number of channel terminations associated with each circuit).

²⁸ See 2014 Service Agreement, Ex. B § 7(b) & Tbl. 1.

²⁹ See, e.g., CTL Ex. 45.05c (PY2Q1 DS3 report).

second tab contained the circuit-level detail for each “unit.” Column L of that tab listed each DS3 circuit ID, and column AU listed whether Verizon was counting the circuit as a “unit.”³⁰ The same tab provided a wealth of additional information about each circuit, including the applicable Billing Account Number and the circuit’s class of service.³¹

20. This reporting package gave CenturyLink full visibility into Verizon’s methodology for calculating the Billing Credit. It informed CenturyLink of: (a) Verizon’s total special-access revenue calculation, broken down by USOC and class of service; (b) Verizon’s total “unit” count for each service type; and (c) which DS1 circuits without mileage and which DS3 circuits Verizon had counted as a “unit,” broken out by circuit ID. That information allowed CenturyLink to assess Verizon’s methodology on a circuit-by-circuit basis. From these reports, CenturyLink had everything it needed to fully reverse engineer Verizon’s methodology for calculating the quarterly Billing Credits.

21. **Step #5: Concurrence.** The next step in the process was to obtain CenturyLink’s concurrence in the credit amount. In my email transmitting the revised credit calculations at Step 4, I typically asked Ms. Grimm to review the revised Tracking Report and agree to the proposed credit amount.³² My understanding, based on years of interactions with Ms. Grimm, was that CenturyLink substantively reviewed Verizon’s Tracking Reports and made a considered judgment about whether Verizon had properly calculated the Billing Credit. Indeed, on several occasions, Ms. Grimm raised questions or concerns with Verizon’s proposed calculations. For example, after receiving the April 2015 Monthly Tracking Report, Ms. Grimm asked me to “take a second look at the formula in E78 on the April tab,” and I quickly corrected

³⁰ See, e.g., *id.* Tab “PY2Q1 DS3 Vol Detail” (PY2Q1 detail report).

³¹ See *id.* Tab “PY2Q1 DS3 Vol Detail,” Rows I (BAN) and K (class of service).

³² See, e.g., VZ Ex. 6 (1/29/14 email from Mason seeking concurrence for PY5Q3).

an error in that cell and sent her a revised report.³³ Similarly, after receiving the March 2014 Monthly Tracking Report, Ms. Grimm asked for “the detailed listing of the DS3 and DS1 units,” because she discerned “a dramatic increase” in the month-over-month unit count.³⁴ As those examples demonstrate, and as Ms. Grimm informed me on several occasions, CenturyLink’s team was using my reporting packages to “confirm the unit numbers.”³⁵

22. After working through any concerns, CenturyLink expressed concurrence in the credit amount via an email from Ms. Grimm to me (copying others at both companies). Those emails typically stated, “[w]e agree with the calculations = credit amount of [amount] earned in [quarter].”³⁶ I interpreted such emails as an indication that CenturyLink had fully concurred in the credit amount, and that Verizon could then proceed to issue the Billing Credit.

23. **Step #6: Credit Payment.** The final step was for Verizon to pay the Billing Credit. Upon receiving final concurrence from CenturyLink, I promptly informed an internal team consisting of several senior marketing and finance employees of the agreed-upon credit amount. Once I had final approval from that internal group, I sent the credit details over to our Wholesale Claims and Collections Group, which would process the credits for payment through Verizon’s in-house Receivables Management System (“RMS”). Once a credit amount was approved for payment in RMS, the system automatically applied the Billing Credit to the applicable BANs that CenturyLink had requested to receive the credits. The credits posted automatically to the next monthly bill issued for each applicable BAN. Depending on the

³³ CTL Ex. 45.02 at 2.

³⁴ CTL Ex. 41.04 at 2.

³⁵ CTL Ex. 37.04; CTL Ex. 38.01 at 4.

³⁶ *See, e.g.*, CTL Ex. 40.12 (5/9/14 email expressing concurrence in the PY5Q4 credit).

approval date and the BAN bill date, there could be almost a month between when Verizon issued the credit and CenturyLink saw the credit posted to its bills.

II. CenturyLink Concurred in the Credit Amounts It Now Disputes

A. CenturyLink’s Access to Information Before Concurrence

24. The six-step process described above provided CenturyLink with a wide array of information about the Billing Credits throughout the billing cycle. That information was sufficient for CenturyLink to make a fully informed decision about whether to concur in Verizon’s credit calculations. In my judgment, based on years of experience administering the Price Flex Deal and interacting with CenturyLink, CenturyLink had access to three separate information flows that put it on notice – *before* it concurred in Verizon’s credit calculations at Step 5 above – of the supposed billing errors it now alleges. All of this information was provided to CenturyLink based on the same data in Verizon’s systems that I used in the ordinary course of business to calculate the amount of CenturyLink’s Billing Credits.

25. *First*, the courtesy Monthly Tracking Reports I sent to Ms. Grimm kept CenturyLink informed on a monthly basis of Verizon’s total “unit” count under the Price Flex Deal. Those reports stated plainly the number of DS1, DS3 CLF, and DS3 CLS “units” that Verizon counted during the applicable month. Separately, CenturyLink also received monthly bills and CSRs that provided exhaustive detail about each individual circuit Verizon had billed – including the charge, circuit ID, class of service, and USOC.³⁷ The circuit-level information in those invoices was drawn directly from Verizon’s Carrier Access Billing System (“CABS”), which was the same source of the data that I used to calculate the quarterly Billing Credits.

³⁷ See, e.g., VZ Ex. 53 (excerpts of December 2013 CSR showing DS3 CLF circuits).

Based on the bills and CSRs, CenturyLink had access to the same underlying information that I used each month to derive the “unit” count for the Billing Credits each month.

26. Verizon sent its monthly invoices in electronic form, and CenturyLink loaded those invoices into its electronic bill-analysis system, called BillTrackPro.³⁸ The BillTrackPro system is an industry leader and offers customers a wide array of sophisticated tools for analyzing the information in an electronic invoice. CenturyLink could have readily used that system to analyze Verizon’s monthly invoices, apply its own criteria for counting “units,” and determine how many circuits it thought should have been counted as “units” in any given month. From there, it would have been a simple matter for CenturyLink to compare its own “unit” count to the one I provided in my Monthly Tracking Reports. Any discrepancy between the two numbers would have put CenturyLink on notice of alleged errors in Verizon’s calculations.

27. *Second*, Ms. Grimm and I had a good working relationship, and I was at all times willing and able to respond to any questions she had about Verizon’s “unit” count. Whenever she sought further clarification about the Monthly Tracking Reports, I worked to provide her the information she needed. Similarly, on occasions when she pointed out inadvertent formula errors, I worked to fix the error promptly.³⁹ Thus, had Ms. Grimm asked me for additional circuit-level detail – or had she asked me to send full circuit-level information in connection with the Monthly Tracking Reports – I would have happily done so. And to the extent that CenturyLink discovered a discrepancy between my “unit” count and CenturyLink’s own count, it had numerous opportunities to ask me for additional information (including full circuit-level reporting) to help investigate any discrepancy.

³⁸ See Declaration of Patrick Welch ¶ 8 (Feb. 22, 2018).

³⁹ See, e.g., CTL Ex. 45.02 at 2.

28. *Third*, Verizon’s reporting package that typically accompanied the Revised Credit Calculation (Step #4 above) gave CenturyLink full visibility into Verizon’s “unit” counting methodology. The DS3 reports provided Verizon’s view, on a circuit-by-circuit basis, of each individual circuit that counted as a “unit.” The DS1 reports likewise provided circuit-level detail for DS1s without mileage under the 2014 plan.⁴⁰ CenturyLink concedes that these reports were sufficient for CenturyLink “to determine whether DS1s without mileage and DS3 circuits were being appropriately accounted for in the quarterly billing credits.”⁴¹ As for the DS1 circuits with mileage, the Tracking Report disclosed Verizon’s total unit count for those circuits, and CenturyLink had access to all the necessary data – through its monthly invoices – to develop its own unit count for such circuits. Alternatively, Ms. Grimm could have asked me to send a circuit-level report for DS1s with mileage, and I would have provided one. But she never did.

29. Although I routinely provided CenturyLink with full circuit-level detail, such detail was unnecessary for CenturyLink to evaluate the accuracy of Verizon’s credit amounts. CenturyLink at all times had the tools necessary to (a) develop its own unit count; and (b) compare that count to the summary-level information in the Monthly Tracking Reports. Indeed, CenturyLink appears to have done just that with respect to its DS1 disputes. As a general matter, under the 2009 Service Agreement, the Monthly Tracking Reports did not contain circuit-level detail with respect to CenturyLink’s DS1 circuits, while under the 2014 Service Agreement, the reports contained circuit-level detail for DS1s without mileage but not DS1s with mileage. CenturyLink claims, in each case, that it “never” received the “circuit level

⁴⁰ See *supra* ¶ 5 n.4 (explaining that DS1 circuits with and without mileage received two separate flat rates under the 2014 Service Agreement, but were combined under the 2009 Service Agreement).

⁴¹ Declaration of Tiffany Brown ¶ 59 (Feb. 23, 2018) (“Brown Decl.”).

detail” necessary to “verify the DS1 counts utilized by Verizon.”⁴² But CenturyLink later purported to dispute Verizon’s DS1 counts by using only two pieces of information: (a) its own unit count, presumably developed using the information from its monthly invoices, and (b) Verizon’s summary count from the Monthly Tracking Reports.⁴³ For each quarter in dispute, CenturyLink had access to that very same information on a monthly basis.

30. Despite having the information it needed to evaluate Verizon’s proposed credit amounts each quarter, CenturyLink concurred in all of the Billing Credits it now disputes. I have reviewed the parties’ correspondence surrounding the Billing Credits for the 16 quarters at issue (2013 PY5Q1 – 2016 PY3Q4) and determined that, in each case, CenturyLink concurred in the final credit amount before Verizon issued the credit. CenturyLink also had all the information it needed to make a fully informed decision about whether to concur in each instance.

31. The full results of my analysis of CenturyLink’s concurrences are set forth in Exhibit 1, which I call the “Credit History Chart.” For each Plan Year and quarter, the chart depicts Steps 2-6 described at ¶¶ 11-23 above. It lists the date that Verizon sent each Monthly Tracking Report to CenturyLink; the date that Verizon obtained concurrence on the open-dispute amounts; the date that Verizon sent CenturyLink its revised credit calculation (less disputes); the date that CenturyLink concurred in that calculation; and the date that Verizon paid the credit. For this last step, I used the date that the credit was approved for payment in RMS; the credits then posted to CenturyLink’s bills during the next billing cycle for each applicable BAN without any further action from Verizon. For ease of reference, I have reproduced a condensed version

⁴² *Id.* ¶ 40; *see id.* ¶ 59 (similar for DS1s with mileage).

⁴³ *See, e.g.*, CTL Ex. 37.06 (Claim # CLINKFAC0186) (disputing Verizon’s DS1 count for PY5Q1 and comparing “Verizon’s Numbers” to “CenturyLink’s Numbers”); CTL Ex. 32 Tab “Detail,” Rows 3725-3736 (raising DS1 disputes with “unknown” circuit IDs).

of the Credit History Chart at Table 2 below. The asterisks represent the reports in which Verizon provided CenturyLink with full circuit-level detail for the quarter.

Table 2: Condensed Version of Credit History Chart

Quarter	End of Quarter	Initial Quarterly Tracking Report	Dispute Concurrence	Revised Credit Calculation	CTL Final Concurrence	Credit Payment
PY5Q1	May 31, 2013	June 18, 2013	July 25, 2013	July 25, 2013*	July 29, 2013	Aug. 5, 2013
PY5Q2	Aug. 31, 2013	Sept. 24, 2013*	Oct. 14, 2013	Oct. 25, 2013*	Oct. 29, 2013	Nov. 13, 2013
PY5Q3	Nov. 30, 2013	Jan. 2, 2014*	Jan. 22, 2014	Jan. 29, 2014	Feb. 4, 2014	Feb. 20, 2014
PY5Q4	Feb. 28, 2014	Mar. 17, 2014*	May 6, 2014	May 9, 2014	May 9, 2014	May 22, 2014
PY1Q1	May 31, 2014	Sept. 3, 2014*	Unknown ⁴⁴	Nov. 17, 2014	Nov. 24, 2014	Apr. 8, 2015
PY1Q2	Aug. 31, 2014	Sept. 25, 2014	Dec. 17, 2014	Dec. 18, 2014*	Dec. 22, 2014	Jan. 8, 2015
PY1Q3	Nov. 30, 2014	Jan. 6, 2015	Unknown	Jan. 28, 2015*	Feb. 4, 2015	Feb. 9, 2015
PY1Q4	Feb. 28, 2015	Mar. 30, 2015	Unknown	Mar. 30, 2015*	May 27, 2015	June 10, 2015
PY2Q1	May 31, 2015	June 23, 2015	Unknown	July 27, 2015*	Aug. 4, 2015	Aug. 7, 2015
PY2Q2	Aug. 31, 2015	Sept. 21, 2015	Sept. 29, 2015	Oct. 5, 2015*	Nov. 17, 2015	Dec. 17, 2015
PY2Q3	Nov. 30, 2015	Jan. 4, 2016	Jan. 13, 2016	Jan. 15, 2016*	Feb. 4, 2016	Mar. 2, 2016
PY2Q4	Feb. 29, 2016	Apr. 8, 2016	Apr. 25, 2016	Apr. 26, 2016*	May 9, 2016	June 4, 2016
PY3Q1	May 31, 2016	July 22, 2016*	Aug. 1, 2016	Aug. 1, 2016*	Feb. 16, 2018	Feb. 16, 2018
PY3Q2	Aug. 31, 2016	Dec. 20, 2016*	Apr. 7, 2017	Sept. 1, 2017*	Feb. 16, 2018	Feb. 16, 2018
PY3Q3	Nov. 30, 2016	Feb. 7, 2017*	Apr. 7, 2017	Sept. 1, 2017*	Feb. 16, 2018	Feb. 16, 2018
PY4Q4	Feb. 28, 2017	Apr. 5, 2017*	Apr. 24, 2017	Sept. 1, 2017*	Feb. 16, 2018	Feb. 16, 2018

⁴⁴ For four quarters, Verizon has reviewed its records and has been unable to determine the date on which the parties reached agreement on the open-dispute amounts.

32. As the Credit History Chart illustrates, in every quarter CenturyLink received full circuit-level detail from Verizon before it concurred with Verizon’s credit amounts. In some instances, such as PY5Q3, CenturyLink received the circuit-level detail *more than a month* before it concurred in Verizon’s calculations.⁴⁵

B. CenturyLink’s Unqualified Concurrences (PY5Q1 – PY2Q1)

33. From PY5Q1 (covering March, April, and May 2013) through PY2Q1 (covering March, April, and May 2015), CenturyLink responded to Verizon’s revised credit calculation with an unqualified concurrence. CenturyLink’s concurrence emails in those quarters, transmitted from Ms. Grimm to me, stated, “[w]e agree with the calculations = credit amount of [NUMBER] earned in [QUARTER].”⁴⁶ In each instance, Verizon paid the Billing Credit in the agreed-upon amount after receiving Ms. Grimm’s concurrence. During this time period, CenturyLink did not communicate to me that it thought Verizon’s longstanding methodology for counting “units” under the Service Agreements was incorrect.

34. CenturyLink provided those nine unqualified concurrences while in possession of information alerting it to the very alleged errors that it now raises. I have reviewed each of CenturyLink’s alleged disputes and concluded that CenturyLink had all the information it needed to raise those disputes before it concurred in Verizon’s proposed credit amounts. I provide an example below of why this is true for each of CenturyLink’s six dispute categories:

⁴⁵ See Credit History Chart (showing that Verizon received circuit-level detail more than a month before concurrence in PY5Q3, PY5Q4, PY1Q1, PY1Q4, PY2Q2, PY3Q1, PY3Q2, PY3Q3, and PY3Q4).

⁴⁶ E.g., CTL Ex. 40.12 at 1 (5/9/14 email expressing concurrence in the PY5Q4 credit amount and stating, “[w]e agree with the calculations = credit amount of [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] earned in PY5Q4.”); CTL Ex. 44.04 at 1 (5/27/15 email expressing concurrence in the PY1Q4 credit amount and stating, “[w]e agree with the calculations = credit amount of [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] earned in PY1Q4.”).

35. **Category 1: DS3 CLF Units in FMS LATAs.** CenturyLink was on notice of the alleged overcounting of DS3 CLF units before it concurred in Verizon’s credit amounts. For example, CenturyLink alleges that Verizon miscounted Circuit 1000 T3Z NWRKNJ03K41 NWRKNJ41WO3 as a DS3 CLF unit in January 2014 (for the PY5Q4 credit).⁴⁷ On March 17, 2014, I sent CenturyLink a PY5Q4 Tracking Report stating clearly that Verizon was counting Circuit 1000 T3Z NWRKNJ03K41 NWRKNJ41WO3 as a DS3 CLF “unit.”⁴⁸ The same report stated that Verizon’s “Total Revenue” for that circuit was “\$0.00.”⁴⁹ It provided similar information about the other FMS DS3 CLF circuits that CenturyLink features in its Complaint.⁵⁰ The report therefore fully apprised CenturyLink of the alleged error of which it now complains (which was not actually erroneous, *see infra* ¶¶ 60-68): that Verizon was including so-called “\$0 DS3 CLF circuits” in its unit count.⁵¹ Yet on May 9, 2014 – after having this information for more than six weeks – CenturyLink concurred in the PY5Q4 credit amount.⁵²

36. **Category 2: Circuits Allegedly Lacking Qualifying MRCs or USOCs.** CenturyLink was likewise on advance notice of the alleged errors concerning circuits for which it says there were no qualifying monthly recurring charges (“MRCs”). CenturyLink claims that “Verizon included circuits” in its unit count that “did not bill a qualifying USOC, or in some

⁴⁷ See Complaint (“Compl.”) ¶ 45 Tbl. 4.

⁴⁸ See CTL Ex. 40.09b Tab “Centurylink DS3 CLS-CLF Billed,” Row 117 (Cell L117 listing circuit ID; Cell AV117 identifying it as a DS3 CLF; Cell AU117 stating that Verizon was counting it as a “unit”).

⁴⁹ *Id.* Tab “Centurylink DS3 CLS-CLF Billed,” Cell AT117.

⁵⁰ Compare, e.g., Compl. ¶ 45 Tbl. 4 (alleging overcharge for Circuit 1001 T3Z JRCYNJ67W02 RCPKNJ02K61), with CTL Ex. 40.09b Tab “Centurylink DS3 CLS-CLF Billed,” Row 120 (showing that Verizon was counting that circuit as a unit).

⁵¹ Compl. ¶ 44.

⁵² See CTL Ex. 40.12 at 1.

cases, did not bill USOCs at all.”⁵³ CenturyLink should have discerned those alleged errors (which often were not erroneous, *see infra* ¶¶ 69-78) from the reports I sent to Ms. Grimm. For example, CenturyLink alleges that Verizon improperly counted Circuit 101 T3Z JRCYNJJOHPT JRCYNJJOK41 as a “unit” for June 2013 despite it not billing a qualifying charge.⁵⁴ But the report I sent Ms. Grimm for that quarter on October 25, 2013 included a circuit-level detail file stating plainly that Verizon was counting that circuit as a “unit” despite it being associated with no charges for various rate elements and having “\$0.00” in “Total Revenue.”⁵⁵ From there, CenturyLink could have easily gone to its monthly bill and queried that circuit to see a full readout of the USOCs associated with the circuit. Despite having that information, CenturyLink fully concurred in the PY5Q2 Billing Credit on October 29, 2013.⁵⁶

37. **Category 3: Meet-Point Circuits.** The dispute over meet-point circuits provides another good illustration of the same principle. CenturyLink now complains that Verizon was double-counting those circuits – that is, that Verizon was improperly counting a single meet-point circuit as two “units” in calculating the Billing Credits.⁵⁷ But this alleged error (which, again, was not actually erroneous, *see infra* ¶¶ 79-86) was apparent from the face of the reports that I sent CenturyLink in the ordinary course of business. For example, CenturyLink claims that Verizon double-counted Circuit 101 T3 BSHPCAXG LSANCA11W33 as a “unit” on two

⁵³ Compl. ¶ 48.

⁵⁴ *See* CTL Ex. 32 Tab “Detail,” Row 40.

⁵⁵ CTL Ex. 38.01(b) Tab “Qwest DS3 CLS_CLF Billed Units,” Row 215 (Cell AU215 noting unit count; Cells Z215 and AA215 denoting charges for channel termination; Cells AE215 and AF215 denoting charges for mileage; Cell AU215 denoting charges for multiplexing; Cell AT215 denoting revenue).

⁵⁶ *See* CTL Ex. 38.02 at 1.

⁵⁷ *See* Compl. ¶¶ 52-56.

different BANs during PY1Q2.⁵⁸ But Verizon fully disclosed that fact before CenturyLink concurred in the PY1Q2 credit. In the circuit-level detail report I sent Ms. Grimm on December 18, 2014, Verizon made clear – in two consecutive rows on the same spreadsheet – that it was counting Circuit 101 T3 BSHPCAXG LSANCA11W33 as *two* “units” in association with *two* separate BANs.⁵⁹ Despite having received this information on December 18, 2014, CenturyLink concurred in the PY1Q2 credit on December 22, 2014.⁶⁰

38. **Category 4: DS3 CLF vs. DS3 CLS Units.** CenturyLink was likewise on advance notice of its category-four disputes. CenturyLink claims that Verizon “incorrectly designated DS3 CLF circuits as DS3 CLS circuits” in its unit count.⁶¹ But CenturyLink also admits it can discern a circuit’s correct categorization from the “formatting” of the circuit ID itself: CLF circuits “are identified by carrier facility formatting” whereas CLS circuits are identified by “serial number formatting.”⁶² For that reason, the Tracking Reports and underlying circuit-level detail apprised CenturyLink of the errors it now alleges. For example, CenturyLink alleges that Circuit 101 T3Z BGVLPABRK14 PITBPALMW81 is a DS3 CLF circuit (apparent from the carrier-facility formatting) but that “Verizon incorrectly included this circuit in the DS3 CLS unit count” in PY2Q1.⁶³ But on July 27, 2015, I sent Ms. Grimm a report stating plainly that Verizon was counting that circuit as a DS3 CLS unit.⁶⁴ CenturyLink

⁵⁸ See *id.* ¶ 53.

⁵⁹ See CTL Ex. 42.05d Tab “CLS CLF DETAIL,” Rows 121-122 (counting the same circuit as a “unit” in connection with both BAN C11SQA1713107 and N31SQA1520106).

⁶⁰ See CTL Ex. 42.06 at 1.

⁶¹ Compl. ¶ 57.

⁶² *Id.* ¶ 57 n.83.

⁶³ Brown Decl. ¶ 26.

⁶⁴ CTL Ex. 45.05c Tab “PY2Q1 DS3 Vol Detail,” Row 770 (Cell L770 depicting circuit ID format; Cell AV770 depicting “CLS” classification).

easily could have inspected that report, compared the circuit ID format to the “CLS” classification, and determined that Verizon had counted in error. Instead, on August 4, 2015, Ms. Grimm fully concurred in Verizon’s proposed Billing Credit.⁶⁵

39. **Category 5: DS0 vs. DS1 Units.** A similar conclusion applies to CenturyLink’s claim that Verizon “incorrectly designated DS0 circuits as DS1 circuits.”⁶⁶ CenturyLink had all the information it needed to raise this dispute before it concurred in Verizon’s credit calculations. For example, CenturyLink alleges that Circuit 11.XHGS.131582..PA is actually a “DS0 circuit” that Verizon incorrectly counted as a “DS1 unit.”⁶⁷ But CenturyLink admits that this classification was apparent on the face of “Verizon’s monthly invoices,” which consistently “indicated that this circuit is a DS1, even though it has a DS0 circuit ID.”⁶⁸ CenturyLink further admits that it is basing its argument (which is wrong on the merits, *see infra* ¶¶ 90-92) on information about the circuit that it obtained from “Verizon’s own access and ordering system.”⁶⁹ CenturyLink therefore could have and should have checked Verizon’s classifications in real-time by comparing its monthly invoices to the information in Verizon’s systems. Instead, CenturyLink repeatedly concurred in Verizon’s credit calculations.⁷⁰

40. **Category 6: Network Optimization.** CenturyLink was likewise on notice of the alleged “circuit routing” error (which was not actually an error, *see infra* ¶¶ 93-95) before it concurred in Verizon’s Billing Credits. As explained below, this dispute does not actually concern the calculation of the Billing Credits; it concerns the validity of Verizon’s underlying

⁶⁵ See CTL Ex. 45.06 at 1.

⁶⁶ Compl. ¶ 60.

⁶⁷ *Id.*

⁶⁸ Brown Decl. ¶ 27.

⁶⁹ *Id.*

⁷⁰ See Credit History Chart.

monthly charges. CenturyLink could and should have raised those disputes before concurring in the credits. For example, CenturyLink alleges that Verizon should not have charged, post-FMS, for Circuit 4005 T3Z WASHDCDNK32 WASHDC29W77.⁷¹ But on January 28, 2015, I sent CenturyLink a report making clear that Verizon was counting that circuit as a DS3 CLF “unit” for purposes of the PY1Q3 Billing Credit.⁷² At this point, CenturyLink could and should have seen that the circuit was billing despite having “no capacity.”⁷³ Instead, on February 4, 2015, CenturyLink fully concurred in the PY1Q3 Billing Credit amount.⁷⁴

41. As those six examples illustrate, CenturyLink habitually concurred in Verizon’s quarterly Billing Credits despite having a wide array of information already in its possession alerting it to the very errors it now alleges. From PY5Q1 through PY2Q1 (March 2013 through May 2015), CenturyLink expressed full, unqualified agreement with Verizon’s credit calculations while having notice of the alleged errors it now asserts.

C. CenturyLink’s Attempts To Provide Partial Concurrences (PY2Q2 – PY3Q4)

42. In PY2Q2, CenturyLink adopted a different approach. Until that point – for the first 25 quarters (out of 32 total) of the Price Flex Deal – CenturyLink had responded to Verizon’s proposed Billing Credits with unqualified agreement. But in PY2Q2, rather than immediately agree with Verizon’s credit calculations, CenturyLink withheld concurrence and asserted that Verizon’s proposed credit amounts were too low.⁷⁵ In PY2Q2 specifically,

⁷¹ See Compl. ¶ 67 Tbl. 8.

⁷² CTL Ex. 43.05d Tab “DS3 VOL DETAIL,” Row 1785.

⁷³ Compl. ¶ 67.

⁷⁴ See CTL Ex. 43.06 at 1.

⁷⁵ See CTL Ex. 46.03 at 1 (“Please note that we have identified an additional **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** in credits should be provided to CenturyLink related to the following 3 errors.”).

CenturyLink, while purporting to “agree” that Verizon owed at least **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** asserted that Verizon also owed an “additional **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** due to asserted “errors” in Verizon’s calculation process. Ms. Grimm’s email indicated that CenturyLink would “file a formal dispute on these errors.”⁷⁶ In response, I wrote Ms. Grimm that Verizon would not issue the Billing Credit until CenturyLink had provided actual “agreement as to the credit amount.” Because Verizon could “not issue any Billing Credits until the applicable credit amount is agreed to by [CenturyLink],” I told Ms. Grimm that “we need to review and resolve the disputes prior to issuing the credit.”⁷⁷ I also reminded CenturyLink that any business-as-usual disputes bearing on the Billing Credit calculation must be submitted “no later than the thirtieth day following the end of the quarter.”⁷⁸ By that statement, I did not mean that disagreements as to the credit calculation itself were due within 30 days; I was willing to discuss any such concerns at any point prior to issuing the credit.

43. In response to my email, Ms. Grimm stated that, in light of Verizon’s position, “CTL clarifies that it agrees to Verizon issuing a credit in the amount of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**” – that is, the original number that Verizon had proposed.⁷⁹ Verizon interpreted that email as an actual concurrence and then issued the Billing Credit in the agreed-upon amount. CenturyLink concurred with that payment after having received Verizon’s position that “once the credit is determined, CenturyLink is

⁷⁶ *Id.*

⁷⁷ CTL Ex. 46.04 at 1-2.

⁷⁸ *Id.* at 2. The provision this statement was referring to was § 8(c) of Exhibit B to the 2014 Service Agreement.

⁷⁹ CTL Ex. 46.04 at 2.

prohibited from raising disputes with respect to amounts or services that were included in the calculation of the credit.”⁸⁰

44. The next two quarters were similar. In both PY2Q3 and PY2Q4, CenturyLink again “agree[d]” with Verizon’s proposed credit amount but also asserted that Verizon owed additional amounts due to “3 errors.”⁸¹ Given the parties’ prior correspondence in PY2Q2, in which Verizon had made its position clear and CenturyLink had concurred in Verizon’s credit amount nonetheless, Verizon interpreted Ms. Grimm’s PY2Q3 and PY2Q4 emails as concurrences and paid the Billing Credits. Indeed, in PY2Q4 I noted that Verizon was “accept[ing]” Ms. Grimm’s response as “agreement as to the credit amounts” and so would pay the credit in the amount originally proposed.⁸² In doing so, I reiterated that “the PY2Q4 Credit is not subject to dispute.”⁸³ Ms. Grimm replied with an unrelated question about Frontier but did not respond substantively to the point that Verizon was treating her email as a final concurrence in the credit amount.⁸⁴ Verizon therefore proceeded to issue the Billing Credit.

45. The final year of the Price Flex Deal – Plan Year 3 of the 2014 Service Agreement – followed a slightly different path to the same result. On March 21, 2016 (in the middle of PY3Q1), CenturyLink sent a letter requesting informal dispute resolution over the Billing Credits Verizon had issued in prior quarters.⁸⁵ On June 17, 2016, after Verizon denied

⁸⁰ *Id.*

⁸¹ VZ Ex. 13 (2/4/16 email from Grimm “agree[ing]” with Verizon’s proposed credit amount but asserting that Verizon also owed “an additional [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] ”); CTL Ex. 48.03 at 1 (PY2Q4 email “agree[ing]” with Verizon’s proposed credit amount but asserting that Verizon also owed “an additional [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] ”).

⁸² VZ Ex. 69 (5/18/16 email from Mason).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *See* CTL Ex. 40.22.

that request, CenturyLink filed its Informal Complaint with the Commission. Meanwhile, Verizon continued to send CenturyLink proposed credit calculations for Plan Year 3. On August 1, 2016, I transmitted the Revised Credit Calculation (Step #4 above) to Ms. Grimm proposing a final credit amount for PY3Q1.⁸⁶ A week later, after hearing nothing from CenturyLink, I “follow[ed] up on the PY3Q1 status” and noted that Verizon had “not received the approval of the credit with the disputes. We cannot proceed with issuing the credit without concurrence.”⁸⁷ Nearly six months later, on February 3, 2017 (while mediation was ongoing), Ms. Grimm replied that CenturyLink “agree[d] with” Verizon’s “calculations” but also had “identified an additional **[[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]]**” that Verizon supposedly owed due to “3 errors.”⁸⁸

46. Due to the then-ongoing litigation, in which CenturyLink was suggesting it had not actually concurred in prior credit amounts, Verizon did not interpret Ms. Grimm’s February 3rd communication as a concurrence. Thus, in response, Verizon analyst Bradley Rhotenberry (who in late 2016 took over as the primary point-of-contact on the Price Flex Deal) stated that Ms. Grimm’s email, as written, suggested that “you do not agree with our calculation.”⁸⁹ He explained that “[b]ecause CenturyLink apparently disagrees with the calculated amount, no credits will be issued in the meantime.”⁹⁰ At the same time, Mr. Rhotenberry noted that “if CenturyLink agrees that the credit amount should be exactly **[[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]]** and no more, please

⁸⁶ See CTL Ex. 49.22 at 4.


⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 2.

⁸⁹ *Id.* at 1.

⁹⁰ *Id.*

let us know.” He also indicated that Verizon would “work[] collaboratively with CenturyLink to resolve any outstanding concerns, and then to facilitate release of credits.”⁹¹

47. Verizon thus continued to wait to issue the PY3 Billing Credit until CenturyLink fully concurred in the amount. On February 16, 2018, Ms. Grimm wrote Mr. Rhotenberry and stated that, in light of Verizon’s position, “CenturyLink hereby concurs with Verizon’s credit calculation for PY3 and asks that Verizon immediately release **[[BEGIN CONFIDENTIAL]]**  **[[END CONFIDENTIAL]]**.”⁹² Mr. Rhotenberry responded and spelled out the specific credit amounts that Verizon had calculated for each quarter in PY3, and he asked Ms. Grimm to “let me know if this is correct.”⁹³ Ms. Grimm replied, “[t]hat is consistent with what we expect Verizon to issue.”⁹⁴ Verizon interpreted that final email as a full concurrence and so issued the credit shortly thereafter.

48. Although CenturyLink ultimately provided concurrence for each credit issued from PY2Q2 through PY3Q4, its initial tack during this time period was to withhold concurrence while demanding immediate payment of the amount that Verizon had proposed. It tried to accomplish this by urging Verizon to divide each Billing Credit into two distinct amounts: the credit amount Verizon had proposed (which CenturyLink called “undisputed credits”),⁹⁵ and an additional amount that CenturyLink thought it was also owed (which CenturyLink called “amounts in dispute”).⁹⁶ CenturyLink claimed that Verizon should pay the so-called “undisputed credit” immediately and resolve the “amounts in dispute” later.

⁹¹ *Id.*

⁹² CTL Ex. 52.15 at 3.

⁹³ *Id.* at 2.

⁹⁴ *Id.* at 1.

⁹⁵ CTL Ex. 46.04 at 2 (PY2Q2 final concurrence email).

⁹⁶ CTL Ex. 52.15 at 2.

49. CenturyLink’s approach would have undermined the Service Agreements’ purpose. As the person administering the Price Flex Deal, I understood the importance of treating each Billing Credit as final once paid. Indeed, one of the key benefits the Service Agreements delivered to Verizon was the ability to definitively close the books on a quarter after paying the Billing Credit. CenturyLink’s proposed approach – pay one amount immediately, but keep the books open to accommodate a possible future payment as well – would have robbed Verizon of the finality it sought. CenturyLink’s position also conflicted with my understanding of the 2014 Service Agreement, which forbade Verizon from “issu[ing] any Billing Credits until the applicable credit amount is agreed to by [CenturyLink].”⁹⁷ CenturyLink’s attempt to concur with the so-called “undisputed credits” while asking for additional payments was not an actual agreement with the “applicable credit amount”; it was a claim that the credit amounts were *too low*. Verizon did not believe it could release the Billing Credits under such circumstances.

50. CenturyLink’s position also posed serious practical problems. The Billing Credits rested on a complex formula with many moving parts.⁹⁸ The inputs into the formula – including the “unit” count in the various service classes – also affected other calculations beyond the special-access Billing Credits, including the “TDM Surcharge” and the “VzT Total Commitment” (relating to CenturyLink’s broader cross-service revenue commitments) that I tabulated on the Monthly Tracking Reports.⁹⁹ For example, for PY1Q1 (covering March, April, and May 2014), my initial quarterly report showed that CenturyLink owed TDM Surcharge in the amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.¹⁰⁰

⁹⁷ 2014 Service Agreement, Ex. B § 8(f).

⁹⁸ See *supra* ¶¶ 4-5 (describing formula).

⁹⁹ See, e.g., CTL Ex. 46.07a (PY2Q2 Monthly Tracking Report, for June 2015).

¹⁰⁰ See CTL Ex. 41.02a Tab “Summary,” Cell G84 (PY1Q1 Quarterly Report).

Verizon was able to proceed with the payment of the Billing Credits only after CenturyLink agreed to the credit calculations in “the revised report removing the TDM Surcharge” months after.¹⁰¹ CenturyLink’s bifurcated approach to credit payment would have disrupted those formulas and created major administrative headaches. It would have required not just staggered payments of a Billing Credit that was designed to be paid just once-per-quarter; it also would have required after-the-fact adjustments to “unit” counts that had already fed into multiple other calculations across the parties’ relationship. Such after-the-fact adjustments to settled calculations would have created significant cost and uncertainty.

51. Finally, CenturyLink’s credit-bifurcation approach rested on the mistaken premise that the so-called “undisputed” and “disputed” parts of the Billing Credits were independent. They were not. The “undisputed” part of a Billing Credit – which CenturyLink wanted Verizon to pay immediately – rested on formulas that were intertwined with CenturyLink’s “disputes.” CenturyLink’s Dispute Category Four provides a case in point.¹⁰² As explained below, that dispute stems from an inadvertent error in the report Verizon used to tabulate the circuit volumes in certain quarters.¹⁰³ That formula error led some DS3 CLF circuits to be classified as more-expensive DS3 CLS circuits. At the same time, however, it *also* led some DS3 CLS circuits to be classified as *less expensive* DS3 CLF circuits.¹⁰⁴ Had CenturyLink properly raised this issue all at once – before concurring in the credit amount – I would have corrected the formula error and proposed a different credit amount (which, in many quarters, would have been *lower* than the one I originally calculated). But CenturyLink wanted immediate, full payment of the original

¹⁰¹ See CTL Ex. 41.06 at 1.

¹⁰² See Compl. ¶¶ 57-59.

¹⁰³ See *infra* ¶¶ 87-89.

¹⁰⁴ See VZ Ex. 65.

amount, even though it rested on the very same formula that CenturyLink was claiming to be erroneous with respect to the “disputed” amounts. That anomaly well illustrates why Verizon’s practice was to pay a single, unitary Billing Credit each quarter.

III. Verizon Attempted To Issue Billing Credits as Promptly as Reasonably Possible

52. Verizon’s practice was to pay the Billing Credits as promptly as it could. It understood that the Service Agreements contemplated the payment of credits within 60 days of the end of each quarter.¹⁰⁵ After PY5Q1, Verizon began to encounter difficulties in meeting that deadline. The resulting delays were generally due to two factors, both of which stemmed from Verizon’s efforts to meet its other obligations under the Service Agreements.

53. *First*, Verizon could not issue a Billing Credit until the parties had agreed on the amount of open disputes to deduct from the credit amount (at Step 3 above, *supra* ¶¶ 13-14). Indeed, the Service Agreements were clear that Verizon could not pay a credit on circuits that were subject to an underlying dispute.¹⁰⁶ Verizon’s practice therefore was to obtain agreement on the dispute amounts before calculating the final Billing Credits, and CenturyLink (via Mr. Romero and Ms. Grimm) repeatedly agreed with that practice. But reaching agreement on all the open disputes was a complicated process that sometimes involved hundreds of thousands of dollars’ worth of claims. In some instances, the parties did not reach agreement on the open-dispute amounts until after 60 days had elapsed. For example, for PY5Q4 (quarter ending February 28, 2014), I sent CenturyLink a proposed credit amount (with circuit-level detail) on March 17, 2014 – only 17 days after the end of the quarter.¹⁰⁷ But the parties did not reach

¹⁰⁵ See 2009 Service Agreement, Ex. B § 7(d).

¹⁰⁶ See 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a).

¹⁰⁷ See CTL Ex. 40.09.

agreement on the open-dispute amounts until May 6, 2014.¹⁰⁸ I then sent the revised credit amount on May 9, and the credit was paid shortly thereafter.¹⁰⁹

54. *Second*, Verizon could not issue a Billing Credit until CenturyLink had concurred in the final credit amount. In many quarters, CenturyLink’s delay in expressing its concurrence caused Verizon to issue the credit after 60 days beyond the end of the quarter. Indeed, in PY5Q3, PY1Q3, PY1Q4, PY2Q1, PY2Q2, PY2Q3, PY2Q4, and PY3Q1, I sent Ms. Grimm a final proposed credit calculation within 60 days of the end of the quarter, but CenturyLink delayed in providing concurrence until after the 60-day deadline.¹¹⁰ PY1Q4 provides a case in point. That quarter ended on February 28, 2015, and I sent Ms. Grimm a revised credit calculation for her concurrence on March 30, 2015.¹¹¹ CenturyLink, however, waited another 58 days – until May 27, 2015, which was well past 60 days after the end of the quarter – to provide its concurrence.¹¹² The delay in such circumstances was due to CenturyLink’s own conduct.

55. That phenomenon became even more pronounced in Plan Year 3 of the 2014 Service Agreement. CenturyLink delayed providing a genuine concurrence in those quarters, instead opting initially to separate each Billing Credit into “undisputed” and “disputed” amounts. Verizon did not understand such communications to authorize payment of the credits. CenturyLink eventually provided a bona fide concurrence on February 16, 2018, after which Verizon paid the credits promptly. In the meantime, however, I stayed in touch with

¹⁰⁸ See Credit History Chart at PY5Q4.

¹⁰⁹ See *id.*

¹¹⁰ See Credit History Chart.

¹¹¹ See CTL Ex. 44.03 at 1.

¹¹² See CTL Ex. 44.04 at 1.

CenturyLink in an effort to facilitate payment. On August 1, 2016, I sent Ms. Grimm the revised credit calculations for PY3Q1, heard nothing for a week, and then followed up on August 8, 2016 to inquire about “the PY3Q1 status.”¹¹³ Six months later, Ms. Grimm responded with a non-concurrence that lasted until February 2018.¹¹⁴ The resulting delay was again attributable to CenturyLink’s conduct, not Verizon’s.

IV. CenturyLink’s Allegations of Counting Errors Generally Lack Merit

56. Since the inception of the Price Flex Deal, Verizon has followed a consistent methodology for calculating the Billing Credit. As explained above, that methodology involved (a) summing up the revenue Verizon obtained from monthly charges for qualifying special-access services; and (b) subtracting the amounts that CenturyLink would have owed on those services had it paid at the flat-rates in the Service Agreements. At all times, Verizon believed that its methodology complied with the Service Agreements and associated contract tariffs.

57. I have extensively reviewed CenturyLink’s allegations of counting errors and determined that most are meritless. The results of my analysis, broken out by dispute category, are set forth below.

A. Category 1: Overcounting DS3 CLF Equivalents

58. Until July 2014, CenturyLink subscribed to FMS in certain territories. Under FMS, Verizon billed for DS3 service at a DS0-equivalent basis – that is, Verizon charged DS3 circuits to CenturyLink in proportion to the number of DS0 channels riding those circuits that CenturyLink actually used. There are 24 DS1s in a DS3, and there are 28 DS0s in a DS1, which

¹¹³ CTL Ex. 49.22 at 3.

¹¹⁴ *Id.* at 2-3.

makes a total of 672 DS0 channels on a DS3. Under FMS, CenturyLink paid Verizon’s standard tariffed rates only for the DS0 channels it actually used each month.

59. CenturyLink’s first claim concerns Verizon’s treatment under the Price Flex Deal of DS3 CLF circuits deployed in FMS territories.¹¹⁵ Verizon’s monthly bills for those circuits charged CenturyLink on a DS0-equivalent basis, and Verizon counted those circuits as DS3 “units” when calculating the Billing Credits at the end of each quarter.

60. Verizon properly determined that DS3 CLF circuits deployed in FMS territories qualified as “Billed DS3 CLF Unit[s]” under the Service Agreements.¹¹⁶ Although Verizon charged for those circuits at the DS0 level – so that the amount CenturyLink paid was lower than the price of a fully subscribed DS3 – those charges remained monthly recurring charges for DS3 service.¹¹⁷ Verizon’s monthly invoices – which were drawn from the same CABS system that supplied the data underpinning Verizon’s Billing Credit calculations – made clear that Verizon’s charges for FMS DS3 CLF circuits corresponded to a class of service and USOCs associated with “DS3 CLF Qualifying Services” under the 2009 Service Agreement.¹¹⁸ In each instance, the invoices tied the DS3 CLF circuit in question to the DS1s that were riding that DS3.¹¹⁹ Although the bills listed a charge of “\$0” next to the DS3 facility, all that meant was that

¹¹⁵ See Compl. ¶¶ 40-47.

¹¹⁶ See 2009 Service Agreement, Ex. B § 2 (defining “Billed DS3 CLF Unit”); 2014 Service Agreement, Ex. B § 2(f) (same).

¹¹⁷ See 2009 Service Agreement, Ex. B § 5(b) (defining “MRCs”); 2014 Service Agreement, Ex. B § 6 (similar).

¹¹⁸ 2009 Service Agreement, Ex. B § 5(a)(ii). The 2014 Service Agreement eliminated the class of service and USOC requirement; Verizon’s charges under that Agreement were even more clearly proper. See 2014 Service Agreement, Ex. B § 2(aa) (defining “Special Access DS3 CLF Services” in terms of the “circuit identifier,” which each DS3 CLF “unit” met).

¹¹⁹ See, e.g., VZ Ex. 53 (excerpts of December 2013 CSR showing entry for DS3 CLF Circuit 4508 T3Z WRCSMAK31 WRCMAVIW, which had multiple DS1 riders).

Verizon was not charging CenturyLink for the entire circuit. Rather, the charges appeared next to the DS1s that were riding that circuit and were apportioned based on how much of the DS3 circuit CenturyLink was actually using. Importantly, the class of service and USOCs associated with those charges corresponded to *DS3 service* provided over a DS3 facility. That conclusion applies to each of the circuits that CenturyLink identifies in its Exhibit 31.

61. An example helps demonstrate the point. CenturyLink alleges that Verizon improperly counted Circuit 4508 T3Z WRCSMACEK31 WRCSMAVIW01 as a DS3 “unit” for purposes of calculating the Billing Credit for December 2013 (in PY5Q4).¹²⁰ The information about that circuit in the CSR for December 2013 confirms that Verizon’s methodology was proper. The first time the circuit appears in the CSR shows a “facility” charge of \$0.¹²¹ But the CSR also identified at least two DS1s riding that circuit: 95.HCGS.563209..NE and 95.HCGS.563207..NE. The underlying charges later appeared next to entries for those DS1s, both of which were directly linked to the same DS3 (4508 T3Z WRCMACEK31 WRCSMAVIW01) on the face of the CSR.¹²² The CSR identifies 95.HCGS.563209..NE as riding that DS3 and contains a series of charges for USOCs MXNM5, N2M, TNW5X, and 1A59S¹²³ – all of which the 2009 Service Agreement expressly enumerated as USOCs for “DS3 CLF Qualifying Services.”¹²⁴ And the glossary at the back of the CSR confirmed that these USOCs were for DS3 service: MXNM5, for instance, referred to “FMS DS3/STS1 TO DS1

¹²⁰ See CTL Ex. 31 Tab “Detail,” Cell C9470.

¹²¹ See VZ Ex. 53 at 2 (excerpt of December 2013 CSR showing \$0 facility charge).

¹²² See VZ Ex. 54 at 64-65 (excerpt of same December 2013 CSR showing qualifying charges, with key language highlighted in yellow).

¹²³ See *id.* at 65.

¹²⁴ See 2009 Service Agreement, Ex. B § 5(a)(ii). The class of service was identified as “XDH1X,” see VZ Ex. 54 at 65, which can refer to DS3 CLF service as well. See 2009 Service Agreement, Ex. B § 5(a)(ii).

MULTIPLEXING PER DS0 EQVLNT CHNL.”¹²⁵ In other words, the charges for Circuit 4508 T3Z WRCMACEK31 WRCSMAVIW01 were set at DS0-equivalent rates, but the CSR made clear they were for services provided over a DS3 CLF facility. That satisfied the definitions of “DS3 CLF Qualifying Services” and “Billed DS3 CLF Unit” under the Price Flex Deal.

62. Table 4 in CenturyLink’s Complaint further confirms the point. The table lists 10 DS3 CLF circuits that Verizon counted as a “unit” for January 2014. But it is inaccurate to say that those circuits had \$0 in “Billed Monthly Recurring Charges.”¹²⁶ Those circuits, like the DS3 CLF circuits in FMS territories generally, had qualifying MRCs that were billed in proportion to the number of channels that CenturyLink used. For example, Circuit 1000 T3Z NWRKNJ03K41 NWRKNJ41W03 (the first one in CenturyLink’s Tables 4 and 5) contained qualifying DS3 CLF charges on the January 2014 invoice. Exhibit 55 demonstrates that this circuit was fully subscribed and charging at the DS0-equivalent level; the exhibit identifies all 28 DS1s riding that DS3 and notes the page on CenturyLink’s CSR where the charges appear. Exhibit 56 then attaches excerpts of those CSR pages with the qualifying charges for this circuit. To take the first entry, .HCGS.45564..NJ occupied Channel 1 on the DS3 and appeared on page 981 of CenturyLink’s January 2014 CSR.¹²⁷ Page 981 of the CSR then showed that the DS3 that this DS1 was riding – Circuit 1000 T3Z NWRKNJ03K41 NWRKNJ41W03 – billed multiple USOCs (MXNM5, N2M, TNW5X, and 1A59S) associated with class of service XDH1X.¹²⁸ The 2009 Service Agreement made clear that those class of service-USOC

¹²⁵ See VZ Ex. 54 at 102 (excerpt from glossary section of December 2013 CSR; highlighting added).

¹²⁶ Compl. ¶ 45 & Tbl. 4.

¹²⁷ See VZ Ex. 55 at Row 3.

¹²⁸ See VZ Ex. 56 at 981-982 (excerpts of January 2014 CSR).

combinations qualified as “DS3 CLF Qualifying Services” and so made this circuit a “Billed DS3 CLF Unit.”¹²⁹

63. Exhibit 55 likewise goes through the same exercise for Circuit 101 T3Z BLTMMDDNW03 BLTMMDWLK31, which is the last circuit on CenturyLink’s Table 4.¹³⁰ Exhibit 57 then similarly provides the relevant excerpts from the January 2014 CSR for that circuit. As the CSR again shows, this circuit billed qualifying charges for DS3 service that were calculated at the DS0-equivalent level.¹³¹ That the charges showed up next to the DS1s riding the DS3 rather than the DS3 facility itself does change the fact that, according to the class of service-USOC combination, the charges were for DS3 CLF service.

64. In addition, I have reviewed CenturyLink’s Table 5.¹³² and determined that it too does not demonstrate any error in the way Verizon counted DS3 CLF circuits as “units.” The first circuit listed, 1000 T3Z NWRKNJ03K41 NWRKNJ41W03, is analyzed above.¹³³ As for the other three circuits listed, all likewise billed proper Class of Service-USOC combinations in January 2014. I have performed a similar analysis of the CSRs for those circuits, which is attached as Exhibit 58. In each instance, the excerpted CSR page identifies qualifying USOCs that the circuit was billing (at the DS0-equivalent level) for that month. For example, CenturyLink claims that Circuit 1001 T3Z JRCYNJ67W02 RCPKNJ02K61 billed only the

¹²⁹ 2009 Service Agreement, Ex. B §§ 2, 5(a)(ii).

¹³⁰ See VZ Ex. 55 at Rows 32-60.

¹³¹ See, e.g., VZ Ex. 57 at 375 (excerpt showing qualifying charges associated with USOCs TNW5X and 1A59S).

¹³² See Compl. ¶ 46 & Tbl. 5.

¹³³ See *supra* ¶ 62; see also VZ Exs. 55-56.

USOC “CTG.” In fact, as page 656 (among others) of the CSR reveals, that circuit billed several qualifying USOCs, including 1A59S.¹³⁴ The same is true of the other circuits in Table 5.

65. CenturyLink’s allegation that these DS3 CLF circuits were billing \$0 appears to rest on a misunderstanding about Verizon’s revenue calculations. CenturyLink appears to assume that such circuits were billing \$0 because the DS3 circuit-level detail that Verizon provided with its Tracking Reports showed \$0 in revenue.¹³⁵ But that revenue line picked up only revenue that Verizon internally classified as “DS3 Total Billed Revenue” rather than *FMS revenue*, which was treated differently for internal accounting purposes. The 2009 Service Agreement reflected that distinction: “Billed FMS Revenue” was its own category under the Agreement, and Verizon’s quarterly revenue reports tracked such revenue separately.¹³⁶ But the 2009 Service Agreement also made clear that circuits billing FMS USOCs could still qualify as DS3 CLF units.¹³⁷ Circuit 4508 T3Z WRCSMACEK31 WRCSMAVIW01 again illustrates the point. The USOCs it billed – MXNM5, N2M, TNW5X, and 1A59S¹³⁸ – all appeared under the “Billed FMS Revenue” category (thus explaining why the “revenue” was treated separately in Verizon’s reports)¹³⁹ and also constituted “DS3 CLF Qualifying Services.”¹⁴⁰

¹³⁴ See VZ Ex. 58 at Row 3; VZ Ex. 59 at 656-57.

¹³⁵ See, e.g., CTL Ex. 40.09b Tab “Centurylink DS3 CLS_CLF Billed,” Cell AT7881 (showing \$0 in revenue for Circuit 4508 T3Z WRCSMACEK31 WRCSMAVIW01); CTL Ex. 31 Tab “Detail,” Cell E9470 (alleging that this circuit had \$0 in MRC).

¹³⁶ See, e.g., CTL 40.09a (PY5Q4 revenue reporting distinguishing “FMS DS3” from “Regular DS3” revenue).

¹³⁷ Compare 2009 Service Agreement, Ex. B § 2 (“Billed FMS Revenue” USOC list), with *id.* Ex. B § 5(a)(ii) (“DS3 CLF Qualifying Services” USOC list).

¹³⁸ See *supra* ¶ 61.

¹³⁹ See 2009 Service Agreement, Ex. B § 2.

¹⁴⁰ See *id.* Ex. B § 5(a)(ii).

66. In sum, DS3 CLF circuits in FMS territories billed monthly recurring charges that were for “DS3 CLF Qualifying Services” under the 2009 Service Agreement. Verizon’s consistent practice since the inception of the Price Flex Deal was to count those circuits as “units” in calculating the quarterly Billing Credits. During the time period that CenturyLink subscribed to FMS (through June 2014), it did not complain about this methodology, nor did it propose some alternative way to count those DS3 CLF circuits.

67. CenturyLink now alleges that Verizon should have counted DS3 CLF circuits using a different methodology. Rather than count by DS3 circuit ID, CenturyLink asserts that Verizon should have tallied up the number of DS0 channels used and divided by 672.¹⁴¹ The counting methodology that CenturyLink now proposes would have required a radical overhaul of the report that I ran every quarter to tally up the “units” and would have required extensive additional work to calculate the number of DS0 channels used on each circuit.

68. CenturyLink’s failure to identify a credible alternative for how Verizon should have treated DS3 CLF circuits further demonstrates the validity of Verizon’s position. I do not believe that CenturyLink’s “count up the DS0s and divide by 672” approach would have been workable or consistent with the clear contractual requirement that Verizon count DS3s by circuit ID. As I understand the Service Agreement, the choice for each DS3 CLF circuit was binary: either a circuit counted as a full “unit” or it counted as nothing. The latter outcome would have been untenable, because it would have meant that Verizon was providing CenturyLink with thousands of expensive DS3 circuits for free. CenturyLink concedes that such a result would be anomalous.¹⁴² That just demonstrates that Verizon’s methodology for these circuits – counting

¹⁴¹ See Compl. ¶¶ 43-44.

¹⁴² See *id.* ¶ 43 (“CenturyLink felt that Verizon was entitled to compensation based on its provision of the underlying services”).

them as full “units” because they were billing qualifying charges at the DS0-equivalent level – was proper.

B. Category 2: Circuits Allegedly Lacking Qualifying USOCs

69. CenturyLink next claims that Verizon improperly counted “units” that were not billing qualifying USOCs in non-FMS territories.¹⁴³ I have reviewed CenturyLink’s disputes in detail and have evaluated its claims on a circuit-by-circuit basis. CenturyLink appears to have lumped many different types of disputes into this category, but at bottom CenturyLink seems to be making one of two claims for each circuit: either that (a) Verizon did not bill a monthly recurring charge for the circuit; or (b) Verizon did bill a monthly recurring charge for the circuit, but the charge lacked a qualifying USOC. CenturyLink does not distinguish between the two claims for any individual circuit, which makes its claims difficult to evaluate. Nonetheless, I have evaluated each circuit in question. The results of my analysis appears in Exhibit 60.

70. Exhibit 60 is based on CenturyLink’s Exhibit 32, which purported to provide an accounting of all the disputed circuits in this dispute category. Columns A-P are the same as the columns on CenturyLink’s analysis. I have added Columns Q through T with my analysis. I generated the data for this analysis from Verizon’s Customer Insight system, which is the Verizon in-house analysis tool that I use in the ordinary course of business. For those circuits CenturyLink provided circuit IDs, Column S sets forth the Class of Service and demonstrates that each challenged circuit had a class of service (XDH3X, XZH38, or XDH1X) that corresponds to qualifying special-access service. Column Q sets forth my findings – “yes” or “no” – about whether Verizon correctly categorized each circuit as a “unit” under the Service Agreements and contract tariffs. Column R provides the rationale for my findings.

¹⁴³ See *id.* ¶¶ 48-56.

71. The rationales for my various findings in Column R of Exhibit 60 are as follows.

- a. Proper USOC: for circuits billed under the 2009 Service Agreement, I have crosschecked the USOC and verified whether it appeared on the appropriate list in the contract.¹⁴⁴ Circuits labeled as “Proper USOC” were billed under the 2009 Service Agreement and charged at least one qualifying USOC, which I have then listed in Column T. These circuits were properly classified.
- b. Proper MRC: for each circuit billed under the 2014 Service Agreement (PY1Q1 – PY3Q4), I have determined whether it billed a monthly recurring charge during the month that CenturyLink disputes. The 2014 Service Agreement eliminated the USOC requirement, so I have not evaluated the USOCs for these circuits. Based on the class of service and the existence of a monthly recurring charge, these circuits were counted properly.
- c. FMS Billing: these circuits are duplicates of ones CenturyLink disputes in Category #1 above. As already explained, CenturyLink appears to assume that these DS3 circuits were billing \$0 revenue because the charges were calculated at the DS0-equivalent level (rather than the DS3 level) per Verizon’s FMS tariff. These circuits were counted properly for the reasons explained in connection with Category #1.¹⁴⁵
- d. Underbilling: these circuits are qualifying special-access circuits that CenturyLink was using and that should have been billing an MRC. They have \$0 in revenue in CenturyLink’s analysis only because Verizon inadvertently underbilled them on its monthly invoices. These circuits should have properly counted as a “unit.”
- e. No Circuit IDs: these disputes concern DS1 “units” where CenturyLink has not provided any circuit IDs for Verizon to validate its analysis. The only thing CenturyLink says about these circuits – asserting without evidence that certain circuits were “DS1 Non-Qualified” – does not properly call into question Verizon’s counting methodology. I have therefore marked these circuits as having been counted correctly.
- f. Fractional Circuit: these circuits are ones that were disconnected before the month in question. When a circuit is disconnected during the middle of a month, Verizon bills its standard monthly charge for that month but then rebates a partial credit the following month to refund a percentage of the charge. The report Verizon used to count circuits under the Price Flex Deal inadvertently interpreted those rebate credits as MRCs and so counted such disconnected circuits as “units.” That said, as explained below, CenturyLink

¹⁴⁴ See 2009 Service Agreement, Ex. B § 5(a).

¹⁴⁵ See *supra* ¶¶ 60-68.

also gained a windfall – in the form of an undeserved flat-rate discount during the month of disconnection – due to this counting methodology.

- g. Ineligible USOC: these circuits were provided under the 2009 Service Agreement but billed a USOC that was not on the qualifying list in the contract. These circuits were incorrectly counted as a “unit.”
- h. No MRC: these circuits did not bill any revenue during the month in question. These circuits were incorrectly counted as a “unit.”

72. Circuit 4002 T3Z MNSSVAXA WASIDCRGW01 provides a good illustration of the “Proper USOC” category. CenturyLink claims (without any supporting detail) that this circuit did not bill a qualifying USOC during March 2013.¹⁴⁶ My analysis shows that this circuit did bill a qualifying USOC during March 2013.¹⁴⁷ I generated a separate report for that circuit using Customer Insight and attached it as Exhibit 61. As the report shows, Circuit 4002 T3Z MNSSVAXA WASIDCRGW01 billed the following for the class of service XDH3X:

[[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] .¹⁴⁸ All three USOCs and the class of service XDH3X were on the list for “DS3 CLF Qualifying Services” in the 2009 Service Agreement.¹⁴⁹

73. Circuit 103 T3Z NBWKNJNBHCA NBWKNJNBK71 provides a good illustration of the “Proper MRC” category. CenturyLink claims that this circuit lacked a qualifying MRC in January 2015.¹⁵⁰ But in January 2015, my analysis from Customer Insight showed that this circuit billed [[BEGIN CONFIDENTIAL]]

[[END

¹⁴⁶ See CTL Ex. 32 Tab “Detail,” Row 54.

¹⁴⁷ See VZ Ex. 60 Tab “Detail,” Cell T110 (showing USOC 1LFSX billing for this circuit).

¹⁴⁸ See VZ Ex. 61 at Col. G (class of service XDH3X), Rows 12-14 (USOCs).

¹⁴⁹ See 2009 Service Agreement, Ex. B § 5(a)(ii).

¹⁵⁰ See CTL Ex. 32 Tab “Detail,” Row 315.

CONFIDENTIAL]] in recurring charges for a Class of Service XDH3X. Verizon therefore properly counted it as a “unit” for that month.

74. Underbilled circuits are ones for which CenturyLink should have been paying monthly charges. For example, Circuit 24.HFGS.70011..PA was an active circuit that in July 2014 should have been billing under several DS3 USOCs, including TRG and 1LFSX.¹⁵¹ But, through an inadvertent error in Verizon’s monthly billing system, Verizon neglected to bill for that circuit and so did not assess the monthly charges that CenturyLink owed. Verizon properly counted these circuits as “units” because CenturyLink properly owed monthly charges on them.

75. Although Verizon acknowledges that the “fractional” disconnected circuits should not have counted as a “unit” in the month after disconnection, CenturyLink benefited from Verizon’s methodology as to those circuits as well. Under the Service Agreements, CenturyLink was entitled to its flat-rate discount only on circuits for which it paid Verizon’s full monthly rates; it had no right to a discount on fractional monthly charges.¹⁵² Under Verizon’s methodology, however, CenturyLink collected such a discount on disconnected circuits: it first paid the full monthly rate for the circuit, received a fractional credit the following month partially rebating that charge, and then received a quarterly Billing Credit that effectively discounted the first full monthly rate to the contractual flat rate. Under CenturyLink’s own theory, it should never have received a Billing Credit on that first month at all; instead, it should have simply paid Verizon’s standard tariff rates for the portion of the month the circuit was in service. CenturyLink’s failure to account for this windfall undermines its claims as to the

¹⁵¹ See VZ Ex. 60 Tab “Detail,” Row 2448.

¹⁵² See 2009 Service Agreement, Ex. B § 5(b)-(c); 2014 Service Agreement, Ex. B § 6.

disconnected circuits. It also further demonstrates why CenturyLink should have raised these disputes in real-time, *before* it concurred in the Billing Credits it now disputes.

76. The final two categories of circuits should not have been counted as “units” under the Price Flex Deal. The circuit that CenturyLink features in Table 6 of its Complaint (44.HFFS.400023..CV) falls into this category and should not have counted as a “unit” because it billed no MRCs.¹⁵³ Some of these circuits were “port rider” DS3 circuits that rode a higher-class OC48 facility, and one billed intrastate charges under an individual-case-basis contract.¹⁵⁴ However, CenturyLink received monthly and quarterly reporting that made clear how Verizon was counting some circuits that billed \$0 or that billed non-qualifying USOCs.¹⁵⁵ Despite that information, CenturyLink repeatedly concurred in Verizon’s credit calculations.

77. CenturyLink claims that Verizon miscounted **[[BEGIN CONFIDENTIAL]]**

[REDACTED]¹⁵⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵³ See Compl. ¶ 50 & Tbl. 6; VZ Ex. 60 Tab “Detail,” Row 2334.

¹⁵⁴ In reviewing CTL Exhibit 32, I have not identified any ineligible UNE or local interconnection circuits that were counted as DS3 “units.”

¹⁵⁵ See *supra* ¶¶ 35-36.

¹⁵⁶ See CTL Ex. 32.

[[END CONFIDENTIAL]]

78. Although I acknowledge that the final three categories in the table above should not have counted as “units,” I do not believe that CenturyLink’s claims have merit as to those circuits. Not only did CenturyLink benefit in various ways from the methodology that Verizon used to count those circuits, but it repeatedly agreed with Verizon’s credit calculations. Further, these circuits represent a tiny fraction of the overall number of DS3 circuits governed by the Price Flex Deal. For the 16 quarters in dispute, Verizon counted a total of [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] DS3 circuits as “units.” The inaccuracies identified above accounted for roughly 1% of that number.

C. Category 3: Meet-Point Circuits

79. CenturyLink next claims that Verizon double-counted “meet-point circuits” as multiple “units” under the Price Flex Deal.¹⁵⁷ Meet-point circuits are those that span multiple LATAs and so are provisioned by multiple different Verizon operating companies. Verizon charged for those circuits multiple times in the ordinary course of business: each Verizon operating company charged for the circuit on its monthly bills for an individual BAN, and each operating company’s charge was proportioned by its “ownership percentage” – that is, the percentage of the overall circuit that fell within its territory.

80. In calculating CenturyLink’s quarterly Billing Credits, Verizon counted meet-point circuits as multiple “units” – once for each BAN under which Verizon operating companies billed the circuit. Verizon did so because the volume report used to generate Verizon’s “unit” totals counted “units” on a BAN-by-BAN basis, such that when a circuit billed twice across two

¹⁵⁷ See Compl. ¶¶ 52-56.

different BANs, the report counted the circuit twice. Verizon used that methodology consistently since the inception of the Price Flex Deal.

81. Verizon’s methodology comported with the Service Agreements. Verizon began with the premise that both parties intended for meet-point circuits to be included in the Price Flex Deal and subject to the flat-rate discounts contained therein. I understood that the parties’ negotiations over the Service Agreements reflected that mutual intent, as meet-point circuits were included in the “unit” counts used to generate the “flat rates” specified in both Service Agreements.¹⁵⁸ And the only coherent way to include those circuits in the flat-rate pricing was to treat a meet-point circuit that was billing across multiple BANs as multiple “units.” Indeed, on any single monthly bill issued for a single BAN, a meet-point circuit would not bill mileage at the Verizon operating company’s full standard tariffed rate; it would bill only a *fraction* of that rate in proportion to the circuit’s “ownership percentage.”¹⁵⁹ But CenturyLink was not entitled to a flat-rate discount on such fractional charges; the Service Agreements specifically required that CenturyLink pay the *full* standard rate for a circuit before it could qualify for a discount.¹⁶⁰ Thus, if a meet-point circuit was viewed as CenturyLink now advocates – as a single, unitary individual circuit spanning multiple LATAs – each monthly interoffice transport charge for the circuit would have been a fractional charge ineligible for flat-rate pricing.

¹⁵⁸ See *infra* Part V.

¹⁵⁹ See, e.g., VZ Exs. 62-63 (excerpts of two July 2014 CSRs showing billing for meet-point circuit 101 T3 BSHPCAXG LSA11W33).

¹⁶⁰ See 2009 Service Agreement, Ex. B § 5(b) (MRCs eligible for discount pricing require CenturyLink to pay the full tariffed amount **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]]); *id.* Ex. B § 5(c) (excluding “fractional debit/credit amounts” from MRC); 2014 Service Agreement, Ex. B § 6(a) (similar).

82. Verizon’s counting methodology solved that problem by viewing meet-point circuits as multiple “units” billing on multiple BANs. When so viewed – as separate “units” being billed under separate BANs – each monthly charge was a full MRC (as each Verizon operating company was charging the full amount it could for the portion of the circuit in its respective territory) and so qualified for flat-rate pricing. In addition, Verizon’s methodology reflected the Service Agreements’ focus on the underlying monthly charges: a “Billed DS3 CLS Unit” was defined not just in terms of circuit ID, but in terms of circuits for which “Verizon billed Qualifying Monthly Recurring Charges.”¹⁶¹ Meet-point circuits billed multiple times by definition and so were properly counted as multiple *billed* “units.”

83. Circuit 101 T3 BSHPCAXG LSANCA11W33, which CenturyLink alleges Verizon double-counted in July 2014,¹⁶² provides a good example. That circuit billed monthly charges on two separate BANs: C11SQA1713107 and N31SQA1520106. Under the first BAN, the Verizon operating company’s invoice billed the CenturyLink operating company at only 14% of its standard transport charges – to reflect the 14% ownership ratio in its territory.¹⁶³ Under the second BAN, the Verizon operating company’s invoice billed the CenturyLink operating company at 80% of its standard transport charges – to reflect its own ownership ratio.¹⁶⁴ If Circuit 101 T3 BSHPCAXG LSANCA11W33 were viewed as a single unitary circuit, neither charge (for only a *portion* of the circuit) would have been a full charge and so neither would

¹⁶¹ 2014 Service Agreement, Ex. B § 2(g).

¹⁶² See Compl. ¶ 53.

¹⁶³ See VZ Ex. 62 (excerpt of July 2014 CSR for BAN C11SQA171307).

¹⁶⁴ See VZ Ex. 63 (excerpt of July 2014 CSR for BAN N31SQA1520106). These two ownership percentages added up to 94% because there was a third non-Verizon LEC that owned the remaining 6% of the circuit.

have qualified for flat-rate pricing. But by viewing the circuit as two “units” billing twice, Verizon effectuated the parties’ intent to include such circuits in the Price Flex Deal.

84. CenturyLink’s contemporaneous conduct was consistent with that understanding. As noted above (at ¶ 37), CenturyLink repeatedly concurred in credit calculations that made clear Verizon was counting meet-point circuits twice. In addition, the flat rates in the 2009 Service Agreement were predicated on a “unit” total that double-counted meet-point circuits.¹⁶⁵

85. Based on these principles, I have analyzed CenturyLink’s Exhibit 33, which provides a so-called “detailed accounting” of its meet-point-circuit disputes.¹⁶⁶ I used Verizon’s Customer Insight system to analyze each individual circuit that CenturyLink claims was overcounted in this manner. My analysis is attached as Exhibit 64. Columns A through P contain the same information (in the same format) that appears on CenturyLink’s Exhibit 33. I have added Columns Q through S with my analysis. Column Q sets forth my findings – “yes” or “no” – about whether Verizon correctly categorized each circuit as a “unit” under the Service Agreements and contract tariffs. Column R provides the rationale for my findings.

86. The rationales for my various findings in Column R of Exhibit 64 are as follows.

- a. Meet-Point Circuit: These circuits are standard meet-point circuits that billed under at least two separate BANs. Verizon properly counted these circuits for the reasons explained above.
- b. Fractional Circuit: These circuits were improperly counted because they had been disconnected – not because they were meet-point circuits. These are all duplicates of circuits already analyzed as part of Category #2 and so are subject to my analysis in Exhibit 60.

¹⁶⁵ See *infra* Part V.

¹⁶⁶ Compl. ¶ 56.

- c. DS1s with 2 CTs: These circuits were DS1 circuits that were properly counted as two “units” because they had multiple channel terminations.¹⁶⁷ Thus, even if CenturyLink were correct that meet-point DS3 circuits should have been counted only once, Verizon’s treatment of the DS1 circuits in this category was correct.

D. Category 4: DS3 CLF vs. DS3 CLS Circuits

87. CenturyLink next alleges that Verizon improperly designated some DS3 CLF circuits as DS3 CLS circuits, which had higher flat rates and so allegedly resulted in Billing Credits that were too low.¹⁶⁸ I have reviewed CenturyLink’s Exhibit 34 and determined that it accurately identifies **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** instances in which Verizon misclassified a DS3 CLF circuit as a DS3 CLS circuit across four months: April 2014, July 2014, August 2014, and March 2015. The error appears to have been introduced into the formula as it was updated during the transition from the 2009 to the 2014 Service Agreement. As a result, that formula error led to anomalies in the way that DS3 volumes were counted during the four months in question. The affected circuits were properly classified during the remaining months covered by the Price Flex Deal.

88. Based on this determination, I corrected the formula error and re-ran Verizon’s volume report against the four months in question. The results indicate that this inadvertent formula error, while classifying **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

[[END CONFIDENTIAL]] DS3 CLS circuits as less-expensive DS3 CLF circuits.¹⁶⁹ The results of my circuit-by-circuit

¹⁶⁷ See 2009 Service Agreement, Ex. B § 2 (defining “Billed DS1 Unit” in terms of individual channel terminations rather than circuit ID); 2014 Service Agreement, Ex. B § 2(r) (defining “DS1 Unit” in terms of individual channel terminations rather than circuit ID).

¹⁶⁸ See Compl. ¶¶ 57-59.

¹⁶⁹ See VZ Ex. 65 at Cols. L and O.

analysis are set forth in Exhibit 65. Column O describes the issue for each circuit, and Column L describes the net dollar effect of my analysis for each circuit.

89. CenturyLink on-balance saved money due to this issue. According to CenturyLink, the CLF vs. CLS classification issue cost CenturyLink a total of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.¹⁷⁰ My analysis shows the same figure. At the same time, however, the formula error worked in CenturyLink's advantage as to the other **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.¹⁷¹ I have included the analysis showing this result in Exhibit 66, which is based on CenturyLink's Exhibit 34.¹⁷² On balance, therefore, CenturyLink benefited by **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** as a result of this formula error.¹⁷³ Had CenturyLink raised this issue in a timely fashion, Verizon would have fixed the error and *reduced* the Billing Credits that it issued.

E. Category 5: DS0 vs. DS1 Units

90. CenturyLink next claims that Verizon improperly classified DS0 circuits as DS1 circuits in calculating the Billing Credits.¹⁷⁴ CenturyLink asserts this dispute as to only two total circuits (billing over multiple quarters): 11.XHGS.129187..PA and 11.XHGS.131582..PA.¹⁷⁵ I have analyzed both circuits and determined that Verizon properly counted each as a DS1 "unit."

¹⁷⁰ See Comp. ¶ 36 Tbl. 2.

¹⁷¹ See VZ Ex. 66 Tab "Summary," Cell D5.

¹⁷² Verizon Exhibit 66's "Detail" Tab is the same as the one on CenturyLink's Exhibit 34. I have added additional analysis in Columns D and E of the "Summary" Tab.

¹⁷³ See *id.* Tab "Summary," Cell E5.

¹⁷⁴ See Compl. ¶¶ 60-63.

¹⁷⁵ See CTL Ex. 35 Tab "Detail," Col. C.

91. I analyzed these two disputed circuits using data extracted from Verizon’s Customer Insight system and generated a spreadsheet with the results. My analysis is set forth in Exhibit 67. As the analysis shows, both circuits had a class of service of XDH1X and billed several USOCs, including TNT8X and 1T58S.¹⁷⁶ That combination – class of service XDH1X plus either the TNT8X or 1T58S USOC – signifies a DS1 circuit and was specifically designated as a “DS1 Qualifying Service[]” under the 2009 Service Agreement.¹⁷⁷

92. CenturyLink’s allegations to the contrary are incorrect. CenturyLink claims that Circuit 11.XHGS.131582..PA was a DS0 because Verizon’s ordering system (CSG) showed it as a DS0 riding a DS1 facility.¹⁷⁸ But that was merely because this circuit was an FMS circuit that was billing on a DS0-equivalent basis.¹⁷⁹ Verizon’s systems actually demonstrate, based on USOC and class of service, that this circuit is a DS1.

F. Category 6: Network Optimization

93. CenturyLink’s final dispute concerns Verizon’s practice of allegedly “billing CenturyLink for an improper and unreasonable number of circuits” after CenturyLink converted off FMS in June 2014.¹⁸⁰ After the expiration of FMS, Verizon billed CenturyLink for each provisioned DS3, regardless of how many channels on each DS3 CenturyLink actually used. CenturyLink claims that Verizon failed to optimize CenturyLink’s network because it spread CenturyLink’s DS0s and DS1s over too many DS3s. According to CenturyLink, this led Verizon to bill CenturyLink for too many spare or underutilized DS3s after FMS.¹⁸¹

¹⁷⁶ See VZ Ex. 67 Tab “DS1 Review.”

¹⁷⁷ See 2009 Service Agreement, Ex. B § 5(a)(i).

¹⁷⁸ See Compl. ¶ 60.

¹⁷⁹ See, e.g., VZ Ex. 67 Tab “DS1 Review,” Cells E20-E25 (showing FMS revenue).

¹⁸⁰ Compl. ¶ 64.

¹⁸¹ See *id.* ¶¶ 64-69.

94. CenturyLink’s network-optimization claim, even if it otherwise had merit, does not demonstrate any error in Verizon’s calculations of the Billing Credits. The methodology for calculating quarterly Billing Credits did not depend on the validity of Verizon’s underlying monthly charges. On the contrary: Verizon counted as a “unit” any DS3 for which Verizon billed (and CenturyLink paid) a standard monthly charge during the relevant quarter – without regard to whether those charges were ultimately valid.¹⁸² In fact, to the extent CenturyLink disputed Verizon’s monthly charges, the circuits whose charges were subject to such disputes at the end of the quarter were irrevocably excluded from the Billing Credit for that quarter.¹⁸³

95. CenturyLink’s network-optimization claim challenges the validity of Verizon’s monthly charges, not the accuracy of its credit calculations. There is no dispute that Verizon billed – and CenturyLink paid – qualifying MRCs for the DS3 circuits that CenturyLink now asserts should have been optimized.¹⁸⁴ There is thus no dispute that Verizon properly counted those circuits as “units” when calculating the Billing Credits. Instead, CenturyLink’s real claim is that Verizon never should have billed for those circuits in the first place. The proper way for CenturyLink to raise that issue was to file business-as-usual disputes challenging Verizon’s charges on its monthly bills. Had it done so, CenturyLink’s disputes would have been deducted from the Billing Credits, and CenturyLink would have forfeited its right to a flat-rate discount on

¹⁸² See 2009 Service Agreement, Ex. B §§ 2, 5(a); 2014 Service Agreement, Ex. B §§ 2(f), 2(g), 6.

¹⁸³ See 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a); *see also supra* ¶¶ 13-14.

¹⁸⁴ Compare, e.g., CTL Ex. 36 Tab “Spare T3-CSG Circuit Research,” Row 3 (alleging that Verizon should not have provisioned 8020 T3Z WASHDCSWK36 WASIDCRGW01), *with* CTL Ex. 44.03e Tab “Data,” Row 2315 (showing that Verizon billed qualifying charges for that circuit for December 2014).

those circuits.¹⁸⁵ CenturyLink’s attempt to challenge those charges as part of a dispute about the Billing Credits is inconsistent with the parties’ contractual framework.

V. The Service Agreements’ Flat Rates Were Predicated on the Counting Methodology that CenturyLink Is Challenging

96. To evaluate CenturyLink’s claims, I also compared CenturyLink’s proposed circuit-counting methodology to the flat-rate formulas set forth in the 2009 Service Agreement. Specifically, I looked at what effect CenturyLink’s proposed methodology would have had on the contractual formulas on which the parties agreed. As explained below, CenturyLink’s current claims are inconsistent with the “unit” counts contemplated by the contract.

97. The Price Flex Deal was originally predicated on per-unit “flat rates” that the parties negotiated based on a three-month reference period: January, February, and March 2009. The flat rates were based on average revenue per unit, which in turn depended on how many “units” the parties counted during the reference period. The 2009 Service Agreement lays out exactly how many DS3 CLS “units” the parties thought there were during that period: **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.¹⁸⁶ Any change to that “unit” count would have affected the DS3 CLS flat rates, and thus the DS3 CLF flat rates as well (which were pegged to the CLS rates).¹⁸⁷

98. I have reviewed the raw circuit-level data concerning CenturyLink’s special-access services during the reference period and counted up the number of DS3 “units” for those three months using the same report that I used consistently throughout the lifespan of the Price Flex Deal. My analysis is attached as Exhibit 68. Running that standard volume report against

¹⁸⁵ See *supra* ¶ 13.

¹⁸⁶ See 2009 Service Agreement, Ex. B Att. 1 (“Step 5: DS3 CLS Billed Units is **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.”).

¹⁸⁷ See *id.*; *id.* Ex. B § 7.

the circuit-level data for January-March 2009 yielded a total DS3 CLS count of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** – the same number that appears in the contract.¹⁸⁸ And as my analysis also shows, plugging those numbers into the flat-rate formula yields the same per-unit rates that are specified in the 2009 Service Agreement: **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.¹⁸⁹ I have checked Verizon’s files, and these calculations match the ones used by the former Verizon employee (Steve Newby, in Offer Management) who originally calculated the flat rates that the parties included in the 2009 Service Agreement.

99. The report used to generate the original 2009 contractual flat rates – which was the same one Verizon used to administer the plan from 2009-2017 – contained many of the same alleged “errors” that CenturyLink now disputes. For example:

- a. Ineligible USOCs: Applying the USOC list set forth in the 2009 Service Agreement would have excluded **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** of the DS3 CLS circuits that the parties agreed had been billed during the reference period.¹⁹⁰ Had circuits with an ineligible USOC been excluded from the “unit” count, the ARPU number – and thus the per-unit flat rates – would have changed.
- b. No MRCs: The parties’ mutually agreed-upon DS3 CLS “unit” count for the reference period was predicated on counting circuits that Verizon’s reports showed as billing \$0. For example, Circuit 69.HFGS.301209..GTES showed a total revenue of \$0 in January 2009, yet the parties counted it as a “unit” for

¹⁸⁸ See VZ Ex. 68 Tab “Jan-Mar 2009 DS3 counts.”

¹⁸⁹ See *id.* Tab “2009 Plan Rate Calculations.”

¹⁹⁰ See *id.* Tab “Jan-Mar 2009 DS3 counts,” Cell L4196. In determining whether a circuit had an eligible USOC for the purpose of this tab, I used CenturyLink’s methodology. For that reason, my analysis shows several DS3 CLF circuits as lacking an eligible USOC when, in fact, those circuits were in FMS territories and so were billing eligible USOCs associated with lower-level facilities riding those DS3s. See *id.* Tab “Jan-Mar 2009 DS3 counts,” Cells D4196, G4196, J4196.

that month.¹⁹¹ Had such circuits been excluded from the “unit” count, the ARPU number – and thus the per-unit flat rates – would have increased.

- c. Meet-point Circuits: The parties’ mutually agreed-upon DS3 CLS “unit” count was predicated on double-counting meet-point circuits. For example, Circuit 81.HFGS.110127..GTEW (among others) was a meet-point circuit that was counted as two “units” in January and February 2009.¹⁹² Had such circuits been excluded from the “unit” count, the ARPU number – and thus the per-unit flat rates – would have increased.

100. I also have evaluated the effect that these alleged errors cumulatively had on the contractual flat rates. To do this, I replicated the contractual flat-rate formula but – instead of using the agreed-upon DS3 CLS “unit” count – I used CenturyLink’s proposed count. I determined what CenturyLink’s count would have been by (a) excluding any DS3 CLS circuit that did not bill a USOC that appeared in the 2009 Service Agreement; and (b) single-counting the meet-point DS3 CLS circuits. The total effect is to reduce the DS3 CLS “unit” count for the three-month reference period by **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.¹⁹³ This, in turn, raises the ARPU and the corresponding flat rates for both DS3 CLS and DS3 CLF service: the CLS flat rates go up by more than **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** per unit.¹⁹⁴ In that way, CenturyLink benefited – in the form of lower flat rates – by agreeing to the very unit “counts” it now disputes.

¹⁹¹ Compare *id.* Tab “Jan-Mar 2009 data,” Cell AT889 (showing \$0 total revenue), with *id.* Tab “Jan-Mar 2009 DS3 counts,” Row 3388 (showing “unit” count).

¹⁹² See *id.* Tab “Jan-Mar 2009 DS3 counts,” Row 3671.

¹⁹³ See *id.* Tab “Jan-Mar 2009 DS3 counts,” Cell L4198. In calculating CenturyLink’s proposed count of DS3 CLF “units,” I did not use CenturyLink’s “count up the DS0s and divide by 672” approach because that approach has no basis in the agreements or associated tariffs and would require massive overhaul of the report I used for this analysis. See *supra* ¶¶ 67-68.

¹⁹⁴ See *id.* Tab “2009 Plan Rate Calculations,” Column V, Rows 59-63, 68-72.

101. Finally, I have performed a similar analysis on the DS3 CLS flat rates in the 2014 Service Agreement. The parties agreed in the contract that there were **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** “DS3 CLS Billed Units” during the three-month reference period (October 2013 – December 2013) preceding that agreement.¹⁹⁵ Comparing that to the Monthly Tracking Reports covering those same months (PY5Q3 and PY5Q4) yields a nearly exact match: the total quantity of reported DS3 CLS “units” over that same time period was **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.¹⁹⁶ The 3-unit difference between those numbers – amounting to a 0.8% variance – is trivial. By contrast, I understand that my colleague Chris Alston has analyzed CenturyLink’s “unit” count and found that it would have materially increased the flat rates in the 2014 Service Agreement.¹⁹⁷ This confirms my belief that Verizon’s longstanding counting methodology was correct.

¹⁹⁵ See 2014 Service Agreement, Ex. B Att. 1.

¹⁹⁶ See VZ Ex. 6.1, Tab “Oct 13,” Cell D15 (PY5Q3 report showing **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** “units”).

¹⁹⁷ See Alston Decl. ¶¶ 26-31.

CERTIFICATION

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April 9, 2018.


Patricia A. Mason

Tab D

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C., Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

DECLARATION OF DAVID SZOL

I, David Szol, being above 18 years of age and competent to make this declaration, hereby submit this declaration in support of Verizon. I declare that:

1. I am a Senior Manager in the Wholesale Claims and Collections Group for Verizon. I started working for Verizon in 1999 in the Internal Audit Group. More than ten years ago, I moved to the Wholesale Claims and Collections Group. I have worked in a variety of roles within that group, including in my current role of Senior Manager. For about the last ten years, my team has had responsibility for billing and dispute resolution with CenturyLink. My current team remains in regular, direct contact with CenturyLink about disputes CenturyLink has with Verizon's bills. That team has included the following Verizon employees: Joseph Aguilar, Jamye Bailey, Henry Ludolph, IV, Patty Lunsford, and Joan DiMatteo-Hunt.

2. In my position as Senior Manager of Wholesale Claims and Collections, I am familiar with the various agreements between CenturyLink and Verizon and the dispute-resolution provisions under those agreements. My team has also been responsible for working disputes filed by CenturyLink concerning special-access DS1 and DS3 circuits, including the ones at issue in this litigation. Due to my supervisory duties, as well as my personal participation in several conversations with CenturyLink about these disputes, I am familiar with the history of the parties' communications regarding CenturyLink's attempts to dispute Verizon's quarterly credit calculations under the Price Flex Deal.¹ The facts set forth below are based on my personal knowledge.

I. Dispute Provisions in the 2009 and 2014 Service Agreements

3. From March 2009 to February 2017, Verizon provided discounted DS1 and DS3 special-access services to CenturyLink under a negotiated contract and accompanying contract tariffs. CenturyLink and Verizon first entered into the Price Flex Deal in 2009, by signing the 2009 Service Agreement, which expired after five years on February 28, 2014.² The parties then entered into a new, similar Service Agreement that took effect on March 1, 2014 and expired on February 28, 2017.³ The 2009 and 2014 Service Agreements set flat rates for each class of

¹ I use the term "Price Flex Deal" to refer to the arrangement – including the Service Agreements and contract tariffs – under which Verizon provided discounted DS1 and DS3 services to CenturyLink from 2009 to 2017.

² See CTL Ex. 3 ("2009 Service Agreement"), Ex. B § 4.

³ See *id.*; CTL Ex. 5 ("2014 Service Agreement"), Ex. B § 4. Both Agreements were implemented in substantial part through contract tariffs filed with the Commission. See 2009 Service Agreement § 3(a); 2014 Service Agreement § 3(a).

service for each year of the Agreements.⁴ Verizon filed the Service Agreements as contract tariffs with the Commission.⁵

4. Under the Price Flex Deal, Verizon provided discounted pricing to CenturyLink by paying a Billing Credit after the end of each quarter. Under that deal, Verizon continued to bill CenturyLink monthly for special-access service, using its ordinary billing and invoicing process, at standard tariffed rates. Then, after the end of each quarter, Verizon calculated and remitted to CenturyLink a Billing Credit that rebated some of those charges and lowered CenturyLink's effective rate to the low flat-rate pricing set forth in the Service Agreements.

5. Verizon and CenturyLink have long followed a standard procedure through which CenturyLink may dispute Verizon's standard monthly special-access charges. At all times relevant to this case, after receiving Verizon's invoice billing a monthly tariffed charge, CenturyLink could dispute that charge by submitting a standard claim form through Verizon's electronic system. Verizon's standard form called for CenturyLink to provide certain information about its dispute, including the date of the invoice on which the disputed charge appeared; the Billing Account Number ("BAN") associated with that disputed charge; the associated circuit ID; and a brief explanation of CenturyLink's dispute. CenturyLink could file such a dispute by submitting it through Verizon's online system, or by emailing it to Verizon. Verizon refers to such disputes – filed through Verizon's ordinary process and disputing standard

⁴ 2009 Service Agreement, Ex. B Att. 1; 2014 Service Agreement, Ex. B Att. 1.

⁵ Exhibit B to the 2009 Service Agreement appeared at Verizon FCC Tariff No. 1 § 21, Option 57; Verizon FCC Tariff No. 11 § 32, Option 55; and Verizon FCC Tariff No. 14 § 21, Option 29. Exhibit B to the 2014 Service Agreement appeared at Verizon FCC Tariff No. 1 § 21, Option 65; Verizon FCC Tariff No. 11 § 32, Option 65; and Verizon FCC Tariff No. 14 § 21, Option 34. *See* CenturyLink Summary of Governing Agreements ¶ 1 n.1 (filed Feb. 26, 2018).

monthly charges – as “business-as-usual” disputes. CenturyLink (like most customers) filed numerous business-as-usual disputes every month.

6. Verizon’s standard dispute system was designed to handle business-as-usual disputes of monthly charges that Verizon had already billed to CenturyLink. By contrast, the 2009 and the 2014 Service Agreements set forth unique, separate dispute requirements that applied to Verizon’s calculation of the Billing Credits.⁶ In calculating the Billing Credit that it would remit to CenturyLink, Verizon did not provide a flat-rate discount on any charges that CenturyLink had disputed as of 30 days following the end of the quarter.⁷ Thus, Verizon and CenturyLink agreed that CenturyLink “must submit such disputes to Verizon no later than the thirtieth (30th) day following the end of each Quarter.”⁸ CenturyLink had to submit these ordinary, business-as-usual disputes on Verizon’s standard claim form and label the dispute as a “Dispute Associated with [the 2009 or 2014] Contract Tariff.”⁹ The labelling requirement assisted Verizon in identifying any disputed charges to back out when it calculated the quarterly Billing Credit. My team summed up those disputes and worked with CenturyLink’s team (led by Joseph Romero) to reach agreement on the total open-dispute amount each quarter; the parties then subtracted that total amount from the Billing Credit.

7. The dispute provisions allowed Verizon to close the books on the quarterly Billing Credits as soon as Verizon had issued them. That was one function of backing out open disputes from the credit amounts: it ensured that disputed charges (which CenturyLink could theoretically recoup later) would not affect the Billing Credits themselves. The Agreements

⁶ *See generally* 2009 Service Agreement, Ex. B § 7(e); 2014 Service Agreement, Ex. B § 8.

⁷ 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a).

⁸ 2009 Service Agreement, Ex. B § 7(e)(ii); 2014 Service Agreement, Ex. B § 8(c).

⁹ 2009 Service Agreement, Ex. B § 7(e)(ii); 2014 Service Agreement, Ex. B § 8(c).

similarly provided that Verizon would not adjust already-issued Billing Credits based on the resolution of disputes or amounts that “Verizon bills . . . after the determination of the Billing Credits.”¹⁰ Indeed, the monthly amounts that CenturyLink paid for services covered by the Billing Credits were “not . . . subject to any claims or disputes” by CenturyLink “at any time in the future,” because Verizon relied on those amounts when it issued the credits.¹¹ And most fundamentally, the Billing Credits themselves were “not subject to dispute.”¹² The 2009 Service Agreement ended on that point, but the parties clarified that restriction in the 2014 Service Agreement, explaining that CenturyLink could dispute the credits if Verizon issued a Billing Credit that did not match the agreed-upon amount.¹³ And to avoid doubt, the parties agreed “Verizon will not issue *any* Billing Credits until the applicable credit amount is agreed to by [CenturyLink].”¹⁴

8. As far as I am aware, CenturyLink never objected to using Verizon’s standard dispute-submission system to raise business-as-usual disputes with respect to Verizon’s monthly charges. Nor did CenturyLink express any disagreement with the process the parties used to agree on the open-dispute amounts at the end of each quarter that would then be subtracted from the Billing Credits. In every quarter, the parties successfully adjusted the Billing Credit based on CenturyLink’s open business-as-usual disputes.¹⁵ From my perspective, that process worked well and allowed CenturyLink efficiently to raise whatever business-as-usual disputes it had with respect to Verizon’s underlying monthly special-access charges.

¹⁰ 2009 Service Agreement, Ex. B § 7(e)(v), (vi); 2014 Service Agreement, Ex. B § 8(d).

¹¹ 2009 Service Agreement, Ex. B § 7(e)(iii); 2014 Service Agreement, Ex. B § 8(e).

¹² 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

¹³ 2014 Service Agreement, Ex. B § 8(f).

¹⁴ *Id.* (emphasis added).

¹⁵ See Declaration of Patricia A. Mason ¶¶ 13-15 (“Mason Decl.”).

9. Based on CenturyLink's conduct from 2014-2017, it appeared to me that CenturyLink misunderstood the dispute provisions applicable to the quarterly Billing Credits issued under the Price Flex Deal. The 30-day dispute deadline and the requirement that CenturyLink submit disputes through the ordinary, business-as-usual dispute submission framework did not apply to the calculation of the Billing Credits themselves. Those provisions instead applied to CenturyLink's business-as-usual disputes of the monthly tariffed charges that went into the formula for calculating the Billing Credits. Verizon believed that this 30-day deadline was necessary because it gave my team sufficient time to tally up the open disputes, reach agreement on those amounts with Mr. Romero's team, and then communicate the amounts to Patricia Mason so that she could deduct the dispute amounts from her credit calculations. And that was important, in turn, because the parties had agreed that CenturyLink would not receive a flat-rate discount (in the form of Billing Credits) on charges that were the subject of dispute 30 days after the end of the quarter. By contrast, CenturyLink was free to dispute Verizon's credit calculations at any point prior to Verizon issuing the credit, and Verizon obtained CenturyLink's full concurrence each quarter before it paid the credit. But once CenturyLink concurred and received a credit, it could not dispute the credit amount.

10. The standard dispute submission requirements, therefore, did not force CenturyLink into a "Catch-22." CenturyLink certainly could have used the ordinary dispute-submission system to file disputes of the quarterly credits, but it had to do so *before* it concurred in Verizon's credit calculations and received the credit. Until the parties agreed on a final credit amount, Verizon would not issue the credit and CenturyLink was free to dispute Verizon's calculations. But once Verizon issued the credit, Verizon understood that the paid credit amount

was no longer subject to dispute – through Verizon’s standard dispute system or otherwise – and that CenturyLink had abandoned any previously submitted disputes.

11. Verizon did not consider the exact method CenturyLink used to submit the disputes to be important, as long as it submitted the disputes prior to Verizon issuing the credits. CenturyLink could have provided a detailed explanation of any errors it identified to Ms. Mason and her team when Verizon asked for CenturyLink’s concurrence in the final credit amount. Ms. Mason and the team involved in calculating the credits could have then handled the disputes, as it was that team – rather than my dispute-resolution team – that was responsible for calculating the Billing Credits and reaching agreement with CenturyLink on the credit amounts each quarter.

12. CenturyLink could also have submitted disputes to my team through the business-as-usual dispute system. Although CenturyLink asserts that it had difficulty filling out the required fields in the dispute-submission form, the error that caused the system to deny CenturyLink’s claims automatically, as discussed below, was CenturyLink’s decision repeatedly to list a BAN as the “Circuit ID” on the form. As Verizon’s claim submission form clearly provides,¹⁶ CenturyLink needed to provide a valid circuit ID associated with the BAN and bill date at issue. CenturyLink could have done so. Moreover, CenturyLink had a close working relationship with my team, particularly with Mr. Aguilar. If at any time it had difficulty filing a dispute, it could have reached out to Mr. Aguilar or other members of my team. In fact, Mr. Aguilar met with CenturyLink after Verizon’s system had automatically rejected CenturyLink’s first set of disputes.¹⁷ As I will discuss in greater detail below, Verizon then assisted CenturyLink in refileing the disputes using an actual circuit ID instead of the BAN, and

¹⁶ VZ Ex. 25 (Blank Verizon Claim Form).

¹⁷ CTL Ex. 40.02 at 1.

Verizon’s dispute-submission system did not automatically deny those disputes.¹⁸ CenturyLink could have followed the same approach in later quarters. Verizon ultimately denied those disputes on the merits, but CenturyLink could have requested that Verizon assist it in filing timely disputes, or it could have used this same procedure to file future timely disputes itself.

13. CenturyLink asserts, without citation, that Verizon’s dispute-submission system would not accept dispute submissions challenging a Billing Credit without the BAN associated with the Billing Credit itself along with the date on which the Billing Credit was received.¹⁹ That is incorrect. Verizon’s in-house Receivables Management System (RMS) only required that CenturyLink submit claims under a BAN associated with CenturyLink’s account and a bill date associated with the BAN.²⁰ RMS automatically rejected many of CenturyLink’s submissions because it used the BAN as the circuit ID. A BAN is not a circuit ID, and RMS cannot process the claim with the same number listed as both BAN and circuit ID. When Verizon helped CenturyLink file its disputes of the PY5 Billing Credit through RMS, Verizon listed a circuit ID associated with the BAN CenturyLink used.²¹ The dispute submissions still used the BAN on which the credit would post and the most recent bill date for that BAN.²² Contrary to CenturyLink’s contention, RMS did not automatically deny these claims.²³

¹⁸ See *infra* ¶¶ 21-25.

¹⁹ See Declaration of Tiffany Brown ¶ 63 (Feb. 23, 2018) (“Brown Decl.”).

²⁰ VZ Ex. 25 “Description of Fields” Tab, Cells D6, D8.

²¹ See *infra* ¶¶ 20-25.

²² See *id.*

²³ See *id.*

II. CenturyLink’s Purported Disputes of Quarterly Billing Credits

14. Between 2014 and 2017, CenturyLink submitted a variety of disputes purporting to challenge Verizon’s calculation of certain Billing Credits issued under the Price Flex Deal.²⁴ I have reviewed and analyzed each of these disputes. My summary of CenturyLink’s dispute submissions and Verizon’s responses is set forth in Exhibit 2. The following sections describe these submissions and responses, as well as subsequent communications between CenturyLink and Verizon about the disputes. My analysis proceeds in the chronological order in which CenturyLink submitted the disputes. The analysis relies on data extracted from RMS, which is the system on which my team relies in the ordinary course of business.

15. CenturyLink submitted formal disputes by sending an email to submit.claims@verizon.com and attaching various files. Although CenturyLink often included multiple Excel documents detailing CenturyLink’s calculations and a PDF or Microsoft Word document explaining CenturyLink’s dispute,²⁵ the key attachment for dispute submission purposes was an Excel document known as the Verizon Claim Form. That Excel document was entitled “Verizon Services Operations – Customer Financial Services Claims Spreadsheet,” and CenturyLink attached it to the dispute submission email as the “[CenturyLink Claim ID] Claim Form.xls.”²⁶ It contained cells for various pieces of information about a client’s dispute, as well as separate tabs providing claim submission instructions and descriptions of fields. The Claim Submission Instructions tab told CenturyLink what each claim type meant and what information

²⁴ See Compl. ¶ 70 & Tbl. 9 (CenturyLink’s list of these disputes).

²⁵ See, e.g., CTL Ex. 37.06.

²⁶ VZ Ex. 25.

was required for that claim type.²⁷ The Description of Fields tab explained what information CenturyLink needed in each cell and how Verizon would validate the information.²⁸

16. When CenturyLink submitted a dispute, RMS automatically extracted the relevant information from this Excel file and loaded it into the system to support the dispute. RMS then automatically validated the information extracted from the Excel document to make sure it matched the information in Verizon's system. For example, RMS validates the BAN provided to make sure the account belongs to the user submitting the dispute. If RMS could not validate the information provided, it would automatically resolve the dispute and deny it. If CenturyLink failed to include some information in a required field, that dispute submission would typically reach a Verizon employee, known as the gatekeeper, who reviews dispute submissions. That Verizon employee would then reject the claim and send a notification to the client about what information is missing. They would also help the client correct any missing information and resubmit the claim.

17. In some cases below, CenturyLink has identified the claims by a different claim number than I will use here. CenturyLink states that each of its formal dispute submissions was associated with two CenturyLink Claim IDs.²⁹ In many cases, CenturyLink appears to have placed the second claim number in a second Excel spreadsheet attached to the email submitting the dispute, but not in the Verizon Claim Form from which RMS extracts information.³⁰ Therefore, RMS only contains one of the two claim numbers that CenturyLink uses for each

²⁷ *Id.*

²⁸ *Id.*

²⁹ Legal Analysis in Support of CenturyLink Communications, LLC's Formal Complaint, Table of CenturyLink-Verizon Claims at 9-11 (filed Feb. 26, 2018) (Compl. Tab A).

³⁰ *See, e.g.*, CTL Exs. 37.06, 37.06b, 37.06e (RMS indicates that CenturyLink attached the Excel file available at 37.06b and 37.06e, but RMS only extracted information from the file available at 37.06b, which was labeled "CCQWC083326 Claim Form.xls.").

claim, although I have located the second claim numbers on other supporting documents attached to the same email. Regardless, the CenturyLink claim number used in RMS is immaterial. Based on the information in RMS, I have identified each of the disputes CenturyLink claims it submitted, except for one dispute for **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**.³¹

18. Verizon Exhibit 2 and the narrative below also sometimes identify two Verizon Claim IDs associated with the same CenturyLink Claim ID. In such cases, CenturyLink emailed the claim forms to submit.claims@verizon.com twice. In most cases, it appears that CenturyLink forwarded the original email to submit.claims@verizon.com again a few minutes after the initial submission. This caused RMS to generate two separate entries, with different Verizon Claim IDs, for the same CenturyLink claim. Again, the Verizon Claim ID is immaterial because it is clear from my overall analysis which pairs of claims are duplicates.

A. CenturyLink’s Claims for Plan Year 5 of the 2009 Service Agreement

1. Plan Year 5, Quarter 4 of the 2009 Service Agreement

19. Plan Year 5, Quarter 4 (“PY5Q4”) of the 2009 Service Agreement covered December 2013 to February 2014.³² CenturyLink notified Verizon that it was disputing the PY5Q4 Billing Credit on June 18, 2014,³³ which was forty days after CenturyLink had concurred with Verizon’s calculation of the credit and 27 days after Verizon had issued the credit.³⁴ On June 19, 2014, CenturyLink submitted a claim through Verizon’s dispute-resolution

³¹ See discussion *infra* ¶ 55.

³² The Agreements and tariffs define the Plan Years and quarters. See 2009 Service Agreement, Ex. B § 2; 2014 Service Agreement, Ex. B § 2(w), (x).

³³ CTL Ex. 40.13.

³⁴ VZ Ex. 1. After CenturyLink concurred in the Billing Credit amount for a particular quarter, the credit had to pass through an internal approval process. Obtaining the necessary approvals generally took one-to-two weeks. In this quarter, Verizon entered the final approval

system for “invalid credit calculations.”³⁵ CenturyLink used BAN 412M520008196, a Pennsylvania BAN to which CenturyLink instructed Verizon to post the largest portion of the credit.³⁶ But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.³⁷ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[a]uto resolved due to invalid circuit. This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”³⁸ Verizon assigned Batch ID 40789586 to the dispute. CenturyLink resubmitted an almost identical claim for the same dispute on July 18, 2014, under a different Claim ID.³⁹ Verizon’s system assigned Batch ID 40793522 and automatically denied that claim for the same reason.⁴⁰

2. Plan Year 5, Quarter 1 of the 2009 Service Agreement

20. Plan Year 5, Quarter 1 (“PY5Q1”) of the 2009 Service Agreement covered March 2013 to May 2013. CenturyLink submitted a claim through Verizon’s dispute-resolution system disputing the Billing Credit for PY5Q1 on July 31, 2014,⁴¹ more than one year after CenturyLink had concurred with Verizon’s calculation of the credit on July 29, 2013, and almost

on May 22, 2014. Once Verizon had entered the final approval in RMS, Verizon considered the credits issued. At that point, RMS automatically issued the credits on the next bill for each BAN designated by CenturyLink to receive a portion of the credit, and no Verizon employee took further action. Because each BAN had a different monthly bill date, depending on the timing of the approval date and the bill date for CenturyLink’s chosen BANs, it could take just shy of a month after Verizon paid the credits for CenturyLink to see the credits on a bill.

³⁵ VZ Ex. 26 (6/19/14 email from Romero); VZ Ex. 26.2.

³⁶ CTL Ex. 37.02b (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY5Q1, which did not change during the course of the plan).

³⁷ VZ Ex. 26.2.

³⁸ CTL Ex. 40.14; VZ Ex. 27.

³⁹ VZ Ex. 28 (7/18/14 email from Romero); VZ Ex. 28.2.

⁴⁰ VZ Ex. 29 (7/18/14 email from Romero); VZ Ex. 29.1.

⁴¹ CTL Ex. 37.06.

one year after Verizon had issued the credit on August 5, 2013.⁴² Verizon assigned Batch ID 40794911 to CenturyLink’s claim CCQWC083326. CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.⁴³ But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.⁴⁴ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[a]uto resolved due to invalid circuit. This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”⁴⁵

21. This dispute submission also contained an Excel attachment – similar to the Verizon Claim Form – that had been filled out by Patrick Lowell, a Sage⁴⁶ representative and was labeled as a “Status Spreadsheet.”⁴⁷ That spreadsheet, from which RMS did not automatically extract claim information, contained a more extensive description of CenturyLink’s claim and the CLINKFAC0186 Claim ID, but it also used BAN 412M520008196 as both the BAN and the circuit ID.⁴⁸ Following a call between CenturyLink and Verizon,⁴⁹ a Verizon employee reprocessed the claim on August 5, 2014 on CenturyLink’s behalf by using the Status Spreadsheet form and changing the circuit ID to 15.HFGS.503052..PA, a

⁴² CTL 37.05; VZ Ex. 1.

⁴³ CTL Ex. 37.02b “Credit Debit by BAN” Tab, Row 17.

⁴⁴ CTL Ex. 37.06b.

⁴⁵ CTL Ex. 37.15; VZ Ex. 30.

⁴⁶ Sage Management, Inc. (“Sage”) is a technology and audit firm that identifies and resolves overbillings from telecommunication vendors on behalf of clients. Its motto is, “[w]e find money on telecom bills.” CenturyLink hired Synchronoss Technologies, Inc. (“Synchronoss”) to provide various services, and Synchronoss subcontracted with Sage. *See* Brown Decl. ¶ 1 and Sage Management, available at sagemi.com.

⁴⁷ CTL 37.06e.

⁴⁸ *Id.*

⁴⁹ CTL Ex. 40.02.

Pennsylvania DS3 CLF circuit covered by the 2009 Service Agreement.⁵⁰ Verizon assigned this claim Batch ID 40795340 and notified CenturyLink of the change in ID.⁵¹

3. Plan Year 5, Quarter 2 of the 2009 Service Agreement

22. Plan Year 5, Quarter 2 (“PY5Q2”) of the 2009 Service Agreement covered June 2013 to August 2013. CenturyLink submitted a claim through Verizon’s dispute-resolution system disputing the Billing Credit for PY5Q2 on July 31, 2014,⁵² long after CenturyLink had concurred with Verizon’s calculation of the credit on October 29, 2013 and Verizon had issued the credit on November 13, 2013.⁵³ Verizon assigned Batch ID 40794915 to CenturyLink’s claim CCQWC083325.⁵⁴ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.⁵⁵ But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.⁵⁶ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[a]uto resolved due to invalid circuit. This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”⁵⁷

23. This dispute submission also contained an Excel attachment – similar to the Verizon Claim Form – that had been filled out by Mr. Lowell and was labeled as a “Status

⁵⁰ VZ Exs. 31, 31.1.

⁵¹ CTL Ex. 40.02.

⁵² CTL Ex. 38.05.

⁵³ See Mason Decl. ¶ 36; VZ Ex. 1.

⁵⁴ CTL Ex. 38.13; VZ Ex. 32.

⁵⁵ CTL Ex. 37.02b (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY5Q1, which did not change during the course of the plan).

⁵⁶ CTL Ex. 38.05b.

⁵⁷ CTL Ex. 38.13; VZ Ex. 32.

Spreadsheet.”⁵⁸ That spreadsheet, from which RMS did not automatically pull information, contained a more extensive description of CenturyLink’s claim and the CLINKFAC0185 Claim ID, but it also used BAN 412M520008196 as both the BAN and the circuit ID.⁵⁹ Following a call between CenturyLink and Verizon,⁶⁰ a Verizon employee reprocessed the claim on August 5, 2014 on CenturyLink’s behalf by using the Status Spreadsheet form and changing the circuit ID to 15.HFGS.502406..PA, a Pennsylvania DS3 CLF circuit covered by the 2009 Service Agreement.⁶¹ Verizon assigned this dispute Claim ID 40795381 and notified CenturyLink of the change in Verizon Claim ID.⁶²

4. Plan Year 5, Quarter 3 of the 2009 Service Agreement

24. Plan Year 5, Quarter 3 (“PY5Q3”) of the 2009 Service Agreement covered September 2013 to November 2013. CenturyLink submitted a claim through Verizon’s dispute-resolution system disputing the Billing Credit for PY5Q3 on July 31, 2014,⁶³ long after CenturyLink had concurred with Verizon’s calculation of the credit on February 4, 2014 and Verizon had issued the credit later that month.⁶⁴ Verizon assigned Batch ID 40794919 to the claim.⁶⁵ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.⁶⁶ But CenturyLink also used BAN

⁵⁸ CTL Ex. 38.05e.

⁵⁹ *Id.*

⁶⁰ CTL Ex. 40.02.

⁶¹ VZ Exs. 33, 33.1.

⁶² CTL Ex. 40.02.

⁶³ CTL Ex. 39.05.

⁶⁴ *See* VZ Ex. 1.

⁶⁵ CTL Ex. 39.13; VZ Ex. 34.

⁶⁶ CTL Ex. 37.02b (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY5Q1, which did not change during the course of the plan).

412M520008196 as the circuit ID for the dispute submission.⁶⁷ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[a]uto resolved due to invalid circuit. This line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”⁶⁸

25. This dispute submission also contained an Excel attachment – similar to the Verizon Claim Form – that had been filled out by Mr. Lowell, a Sage representative, and was labeled as a “Status Spreadsheet.”⁶⁹ That spreadsheet, which RMS did not automatically pull information from, contained a more extensive description of CenturyLink’s claim and the CLINKFAC0184 Claim ID, but it also used BAN 412M520008196 as both the BAN and the circuit ID.⁷⁰ Following a call between CenturyLink and Verizon,⁷¹ a Verizon employee reprocessed the claim on August 5, 2014 on CenturyLink’s behalf by using the Status Spreadsheet form and changing the circuit ID to 15.HFGS.503052..PA, a Pennsylvania DS3 CLF circuit covered by the 2009 Service Agreement.⁷² Verizon assigned this dispute submission Claim ID 40795380, and notified CenturyLink of the change in ID.⁷³

B. The Parties’ Discussions About CenturyLink’s Initial Disputes

26. After CenturyLink submitted its first disputes concerning the PY5Q4 credit, Mr. Romero, a CenturyLink employee, set up a July 30, 2014 call with Mr. Aguilar, a former

⁶⁷ CTL Ex. 39.05b.

⁶⁸ CTL Ex. 39.13; VZ Ex. 34.

⁶⁹ CTL Ex. 39.05e.

⁷⁰ *Id.*

⁷¹ CTL Ex. 40.02.

⁷² VZ Exs. 35, 35.1.

⁷³ CTL Ex. 40.02.

Verizon employee whom I oversaw, to discuss CenturyLink's dispute submissions.⁷⁴

Mr. Aguilar's participation in the call did not indicate that Verizon believed that CenturyLink's disputes were timely or otherwise proper. Rather, my team participated in a call with CenturyLink (and Sage consultants) to understand more fully CenturyLink's concerns. This was in part necessary because CenturyLink had raised its disputes through an electronic process designed for business-as-usual disputes. Initially, my team was not as familiar with the Billing Credit process and the relevant contractual provisions as were other Verizon groups that calculated, disclosed, and issued the Billing Credits.⁷⁵ In addition, CenturyLink was (and is) a valued customer, and Verizon wanted to ensure that it was responsive to CenturyLink's concerns as a business matter.

27. The day after that call, on July 31, 2014, CenturyLink submitted its claims for PY5Q1-Q3 via Verizon's formal dispute-resolution system.⁷⁶ The system initially automatically rejected the disputes for the reasons explained above.⁷⁷ But that same day, Mr. Aguilar requested and received (via Tiffany Brown, a Sage consultant) a list of the DS3 CLF circuits that CenturyLink thought should count as a "unit" for a sample month.⁷⁸ On August 1, 2014, Mr. Aguilar requested additional data supporting CenturyLink's calculations.⁷⁹ Although Ms. Brown did not immediately provide the requested data, Mr. Romero from CenturyLink, three Sage consultants, and Mr. Aguilar from Verizon held a call on August 5, 2014.⁸⁰ Karen Rose, a

⁷⁴ CTL Ex. 40.01 at 4.

⁷⁵ See generally Mason Decl.

⁷⁶ See discussion *supra* ¶¶ 20-25; VZ Ex. 2 (Szol Chart).

⁷⁷ See discussion *supra* ¶¶ 11-13, 20-25.

⁷⁸ VZ Ex. 36 at 4 (2/12/15 email chain ending from Aguilar).

⁷⁹ VZ Ex. 36 at 3.

⁸⁰ CTL Ex. 40.02.

Verizon employee, then resubmitted CenturyLink’s disputes into RMS by including an actual circuit ID in that required field.⁸¹ Verizon notified CenturyLink of the new Verizon IDs associated with resubmitting the disputes.⁸²

28. In the meantime, Mr. Aguilar followed up on his request for DS1 data to Ms. Brown on August 19, 2014.⁸³ Ten days later, having not received any additional information, Verizon sent a message through RMS denying those pending claims because “no additional supporting documentation has been provided to substantiate the validity of the dispute.”⁸⁴ Ms. Brown sent the requested information six days later on September 4, 2014. In response to a request from Mr. Lowell about the status of CenturyLink’s claims on September 9, 2014, Verizon then conveyed that the “disputes would remain open,” and that it would continue investigating CenturyLink’s concerns.⁸⁵ At this point, my team was still reviewing CenturyLink’s submissions and seeking to understand their disputes. Although CenturyLink’s PY5 Billing Credit disputes were untimely when CenturyLink submitted them – and Verizon validly could have refused to consider them – Verizon did not want to deny CenturyLink’s claims finally until it fully understood the disputes.

29. On September 15, 2014, after further investigation based on the data that Ms. Brown had sent, Verizon sent CenturyLink its “final response to the CSP issue.”⁸⁶ That response explained that Verizon was properly counting the DS3 CLF “units” in the same manner it had throughout the lifespan of the 2009 Service Agreement. Verizon further explained that

⁸¹ See discussion *supra* ¶¶ 11-13.

⁸² CTL Ex. 40.02.

⁸³ VZ Ex. 36 (2/12/15 email chain ending from Aguilar).

⁸⁴ See VZ Ex. 2; CTL Ex. 40.01 at 3.

⁸⁵ CTL Ex. 40.03 at 3.

⁸⁶ *Id.* at 2.

CenturyLink had “agreed to the credit” each quarter after Verizon had “provided all supporting documentation to [CenturyLink] prior to their concurrence.”⁸⁷ At this point, having verified that CenturyLink’s claims lacked merit, Verizon considered the disputes closed.

30. More than a week later, Mr. Lowell of Sage objected to Verizon’s denial of the disputes and submitted additional information on behalf of CenturyLink.⁸⁸ Verizon reviewed this information, and Mr. Aguilar sought clarification about how many circuits were disputed and a list of CenturyLink’s disputed DS3 CLF circuits by circuit ID. This continued conversation reflected Verizon’s continuing good-faith efforts to understand the position of a valued client. On October 3, 2014, Ms. Brown clarified how many circuits CenturyLink disputed for which month but explained that she did not have a list of the **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** DS3 CLF circuits she was disputing for February 2014.⁸⁹ Rather, she stated that Verizon should have calculated the DS3 CLF unit count by summing up the overall number of DS0 channels used and dividing by 672.⁹⁰ That calculation yielded a total that was **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** circuits fewer than Verizon’s total count.

31. Verizon had internal calls on October 23 and 27, 2014 to discuss CenturyLink’s additional submissions, but none of it changed Verizon’s final position that it had already conveyed on September 15, 2014.⁹¹ After Mr. Lowell contacted Verizon again in November, Mr. Aguilar agreed to set up a meeting between CenturyLink and Verizon’s Product Managers

⁸⁷ *Id.* at 3.

⁸⁸ VZ Ex. 37 (9/26/14 email chain ending from Lowell).

⁸⁹ CTL Ex. 40.03 at 1.

⁹⁰ *Id.*

⁹¹ VZ Exs. 38, 39.

after the upcoming holiday season. Again, at that point Verizon considered the disputes closed because the quarterly credits were not subject to dispute and because CenturyLink had concurred in each credit amount before Verizon issued the credits. But Verizon valued CenturyLink's business and so stated that it would agree to a meeting to discuss the issues even further.

32. Mr. Lowell of Sage again reached out to Verizon on behalf of CenturyLink in early February 2015.⁹² Mr. Aguilar delayed the call because he wanted to discuss the issue internally with me.⁹³ On February 26, 2015, Mr. Aguilar emailed Mr. Lowell asking to set a time for the call.⁹⁴ Mr. Lowell responded on March 10, 2015 and set a call for two days later with Mr. Romero of CenturyLink and Ms. Brown of Sage. On that call, in which Mr. Lowell did not end up participating, Mr. Aguilar explained that Verizon's position had not changed because the contract provided that the Billing Credits were not subject to dispute and because CenturyLink had repeatedly agreed to Verizon's credit calculations.⁹⁵

33. After this March 12, 2015 call, Verizon believed it had engaged in extensive dialogue with CenturyLink about these disputes; that the disputes had been closed for months; and that the subject of CenturyLink's claims (the quarterly Billing Credits) was specifically "not subject to dispute."⁹⁶ Based on the parties' course of conduct, at this point Verizon believed that the architect of these claims was Sage – a consultant that had a long history of raising questionable disputes – rather than CenturyLink itself. Very little of the communication about this dispute came from CenturyLink directly. In fact, on February 13, 2015, the CenturyLink

⁹² CTL Ex. 40.04.

⁹³ *Id.* at 2.

⁹⁴ *Id.* at 1.

⁹⁵ VZ Ex. 40 (3/12/15 email chain ending from Aguilar).

⁹⁶ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

employee who was most directly involved in analyzing and agreeing to Verizon's quarterly credit calculations stated that she was not even aware of these disputes.⁹⁷ Further, Verizon was disinclined to spend more time dealing with credit disputes it had specifically contracted to avoid in the Service Agreements. Thus, while Mr. Aguilar continued to respond to emails from CenturyLink and Sage representatives about these issues, he did not offer to have another call.⁹⁸

34. In August 2015, Patrick Welch and I discussed resolving the disputes directly between the two companies without including any Sage representatives. Verizon still considered CenturyLink's disputes closed and barred by the Service Agreements. But, as always, we were willing to discuss the concerns of a major customer. On September 9, 2015, Mr. Welch sent me an email summarizing CenturyLink's claims.⁹⁹ I then participated in a call with Mr. Welch and Mr. Romero of CenturyLink on September 24, 2015.¹⁰⁰ In response to Mr. Welch's request for the written documentation of Verizon's denial, Mr. Aguilar resent our final denial email from September 2014 and a summary of his March 12, 2015 call – again reiterating our consistent position that CenturyLink had concurred in all of the quarterly credit calculations prior to issuance and therefore could not dispute the credits.¹⁰¹

35. From this point forward, Verizon participated in regular calls attempting to address CenturyLink's concerns.¹⁰² But because CenturyLink persisted in contesting the quarterly Billing Credits after CenturyLink had concurred and Verizon had issued them, the discussions eventually reached an impasse.

⁹⁷ VZ Ex. 41 (2/20/15 email chain ending from Kennedy).

⁹⁸ CTL Ex. 40.05.

⁹⁹ CTL Ex. 40.07 at 1.

¹⁰⁰ VZ Ex. 42.

¹⁰¹ VZ Ex. 43 (4/13/2016 email chain ending from Mason).

¹⁰² *See, e.g.*, VZ Exs. 44, 45, 46.

C. CenturyLink’s Claims for Plan Year 1 of the 2014 Service Agreement

36. The 2009 Service Agreement expired on February 28, 2014. The parties entered into a similar three-year service Agreement beginning on March 1, 2014.

1. Plan Year 1, Quarter 1 of the 2014 Service Agreement

37. Plan Year 1, Quarter 1 (“PY1Q1”) of the 2014 Service Agreement covered March 2014 to May 2014. CenturyLink submitted claim CCQWC105568 through Verizon’s dispute-resolution system disputing the PY1Q1 Billing Credit on September 15, 2015,¹⁰³ almost a year after CenturyLink had concurred with Verizon’s calculation of the credit on November 24, 2014, and more than five months after Verizon had issued the credit.¹⁰⁴ Verizon assigned Batch IDs 40860411 and 40860446 to the claim.¹⁰⁵ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹⁰⁶ It used May 20, 2014 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹⁰⁷ But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁰⁸ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically denied the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹⁰⁹ CenturyLink also submitted the same claim on the next day under Claim ID CLINKFAC0376.¹¹⁰ Because CenturyLink did not

¹⁰³ CTL Ex. 41.01.

¹⁰⁴ See VZ Ex. 1.

¹⁰⁵ VZ Ex. 2.

¹⁰⁶ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13.

¹⁰⁷ CTL Ex. 41.01b.

¹⁰⁸ *Id.*

¹⁰⁹ VZ Ex. 70.

¹¹⁰ VZ Ex. 47 (9/15/15 email from Romero).

fill out the claim form completely, Verizon’s system rejected it.¹¹¹ Verizon assigned this claim Batch ID 40860467.¹¹²

38. Mr. Aguilar and I also discussed these claims with Mr. Welch and Mr. Romero during our September 24, 2015 conversation.¹¹³ Verizon did not consider these disputes to be materially different from the ones CenturyLink had submitted under the 2009 Service Agreement. Because Verizon had already issued the credits with CenturyLink’s concurrence, Verizon believed that these claims were barred and so should remain denied.

2. Plan Year 1, Quarter 2 of the 2014 Service Agreement

39. Plan Year 1, Quarter 2 (“PY1Q2”) of the 2014 Service Agreement covered June 2014 to August 2014. CenturyLink submitted claim CCQWC105570 through Verizon’s dispute-resolution system disputing the PY1Q2 Billing Credit on September 15, 2015,¹¹⁴ long after CenturyLink had concurred with Verizon’s credit calculation on December 22, 2014 and Verizon had issued the credit on January 8, 2015.¹¹⁵ Verizon assigned Batch IDs 4086409 and 40860442 to the claim.¹¹⁶ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹¹⁷ It used August 20, 2014 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹¹⁸ But

¹¹¹ VZ Ex. 47.1 (according to the Claim Submission Instructions, the adjustment serial # and customer audit # are required fields for claim type NRC13).

¹¹² VZ Ex. 48 (9/15/15 email from submit.claims@verizon.com); VZ Ex. 48.1.

¹¹³ *See supra* ¶ 34.

¹¹⁴ CTL Ex. 42.02.

¹¹⁵ *See* VZ Ex. 1.

¹¹⁶ VZ Ex. 2.

¹¹⁷ CTL Ex. 41.02e (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

¹¹⁸ CTL Ex. 42.02b.

CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹¹⁹ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹²⁰

3. Plan Year 1, Quarter 3 of the 2014 Service Agreement

40. Plan Year 1, Quarter 3 (“PY1Q3”) of the 2014 Service Agreement covered September 2014 to November 2014. CenturyLink submitted claim CCQWC105571 through Verizon’s dispute-resolution system disputing the PY1Q3 Billing Credit on September 15, 2015,¹²¹ long after CenturyLink had concurred with Verizon’s credit calculation on February 4, 2015 and Verizon had issued the credit on February 9, 2015.¹²² Verizon assigned Batch IDs 40860413 and 40860438 to the claim.¹²³ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹²⁴ It used November 20, 2014 for the bill date, which was the last bill date for that BAN in the relevant quarter. But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission. In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating,

¹¹⁹ *Id.*

¹²⁰ CTL Ex. 42.08a.

¹²¹ CTL Ex. 43.01.

¹²² *See* VZ Ex. 1.

¹²³ VZ Ex. 2.

¹²⁴ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

“[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹²⁵

4. Plan Year 1, Quarter 4 of the 2014 Service Agreement

41. Plan Year 1, Quarter 4 (“PY1Q4”) of the 2014 Service Agreement covered December 2014 to February 2015. CenturyLink submitted claim CCQWC105572 through Verizon’s dispute-resolution system disputing the PY1Q4 Billing Credit on September 15, 2015,¹²⁶ more than three months after CenturyLink had concurred with Verizon’s credit calculation on May 27, 2015 and after Verizon had issued the credits on June 10, 2015.¹²⁷ Verizon assigned Batch IDs 40860415 and 40864050 to the claim.¹²⁸ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹²⁹ It used February 20, 2015 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹³⁰ But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹³¹ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹³²

¹²⁵ VZ Ex. 49 (9/17/15 email from submit.claims@verizon.com); VZ Ex. 49.1.

¹²⁶ CTL Ex. 44.01.

¹²⁷ See VZ Ex. 1.

¹²⁸ VZ Ex. 2.

¹²⁹ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

¹³⁰ CTL Ex. 44.01b.

¹³¹ *Id.*

¹³² CTL Ex. 44.06a.

D. CenturyLink’s Claims for Plan Year 2 of the 2014 Service Agreement

1. Plan Year 2, Quarter 1 of the 2014 Service Agreement

42. Plan Year 2, Quarter 1 (“PY2Q1”) of the 2014 Service Agreement covered March 2015 to May 2015. CenturyLink submitted claim CCQWC105573 through Verizon’s dispute-resolution system disputing the PY2Q1 Billing Credit on September 15, 2015,¹³³ more than one month after CenturyLink had concurred with Verizon’s credit calculation on August 4, 2015 and Verizon had issued the credits on August 7, 2015.¹³⁴ Verizon assigned Batch IDs 40860417 and 40860457 to the claim.¹³⁵ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹³⁶ It used May 20, 2015 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹³⁷ CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹³⁸ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹³⁹

¹³³ CTL Ex. 45.01.

¹³⁴ *See* VZ Ex. 1.

¹³⁵ VZ Ex. 2.

¹³⁶ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

¹³⁷ CTL Ex. 45.01b.

¹³⁸ *Id.*

¹³⁹ CTL Ex. 45.07a.

2. Plan Year 2, Quarter 2 of the 2014 Service Agreement

43. Plan Year 2, Quarter 2 (“PY2Q2”) of the 2014 Service Agreement covered June 2015 to August 2015. CenturyLink submitted claim CCQWC107917 through Verizon’s dispute-resolution system disputing the PY2Q2 Billing Credit on October 29, 2015.¹⁴⁰ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹⁴¹ It used August 20, 2015 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹⁴² CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁴³ In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹⁴⁴ On October 19, 2015, CenturyLink indicated that it did not agree with Verizon’s credit calculations and instead raised the same disputes via email.¹⁴⁵ But on November 17, 2015, CenturyLink fully concurred in the \$14,169,087 credit less than three weeks after submitting the formal dispute.¹⁴⁶ At this point Verizon considered CenturyLink’s dispute abandoned. Verizon issued the credit on December 17, 2015.¹⁴⁷

¹⁴⁰ CTL Ex. 46.01.

¹⁴¹ CTL Ex. 46.02d, “PY2Q2” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY2Q2).

¹⁴² CTL Ex. 46.01b.

¹⁴³ *Id.*

¹⁴⁴ CTL Ex. 46.08a.

¹⁴⁵ CTL Ex. 46.04 at 3-4.

¹⁴⁶ *Id.* at 1-2.

¹⁴⁷ VZ Ex. 1.

3. Plan Year 2, Quarter 3 of the 2014 Service Agreement

44. Plan Year 2, Quarter 3 (“PY2Q3”) of the 2014 Service Agreement covered September 2015 to November 2015. CenturyLink submitted claim CCQWC112558 through Verizon’s dispute-resolution system disputing the PY2Q3 Billing Credit on February 5, 2016.¹⁴⁸ Verizon assigned Batch ID 40889583 to the claims. CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹⁴⁹ It used November 20, 2015 for the bill date, which was the last bill date for that BAN in the relevant quarter.¹⁵⁰ CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁵¹ In light of these discrepancies, Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹⁵² CenturyLink had concurred in the credit amount the day before, on February 4, 2016.¹⁵³ After obtaining concurrence, Verizon issued the credit on March 2, 2016, at which point it considered CenturyLink’s claim abandoned.¹⁵⁴

4. Plan Year 2, Quarter 4 of the 2014 Service Agreement

45. Plan Year 2, Quarter 4 (“PY2Q4”) of the 2014 Service Agreement covered December 2015 to February 2016. CenturyLink submitted claim CCQWC122039 through

¹⁴⁸ CTL Ex. 47.01.

¹⁴⁹ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

¹⁵⁰ CTL Ex. 47.01b.

¹⁵¹ *Id.*

¹⁵² VZ Ex. 50 (2/5/16 email from submit.claims@verizon.com); VZ Ex. 50.1.

¹⁵³ VZ Ex. 13 (2/4/16 email chain ending from A. Grimm); VZ Ex. 1.

¹⁵⁴ VZ Ex. 1.

Verizon’s dispute-resolution system disputing the PY2Q4 Billing Credit on July 13, 2016.¹⁵⁵ This was two months after CenturyLink had originally concurred in Verizon’s credit calculations on May 9, 2016.¹⁵⁶ On May 18, 2016, Verizon informed CenturyLink that it was issuing the credits and reminded CenturyLink that they would no longer be subject to dispute.¹⁵⁷ Verizon thereafter issued the credits on June 4, 2016; CenturyLink submitted its claim more than a month later.¹⁵⁸ CenturyLink used BAN 412M520008196, a Pennsylvania BAN on which CenturyLink instructed Verizon to post the largest portion of the credit.¹⁵⁹ It used November 20, 2014 for the bill date, which was the last bill date for that BAN in the relevant quarter. But CenturyLink also used BAN 412M520008196 as the circuit ID for the dispute submission. In light of this discrepancy – a BAN is not a circuit ID, and the same number cannot go in both fields – Verizon’s system automatically rejected the claim, stating, “[t]his line item is being denied because the Circuit ID/CLLI/WTN is invalid or the BAN, Circuit ID/CLLI/WTN, Bill Date combination is invalid.”¹⁶⁰

E. CenturyLink’s Claims for Plan Year 3 of the 2014 Service Agreement

46. During Plan Year 3 of the 2014 Service Agreement, which lasted from March 2016 to February 2017, the parties were engaged in more formal discussions about CenturyLink’s claims. On March 21, 2016, Mr. Welch sent me a letter (entitled “Dispute Notice”) purporting to invoke the formal dispute-resolution procedures under one of the parties’

¹⁵⁵ CTL Ex. 48.01.

¹⁵⁶ VZ Ex. 1.

¹⁵⁷ VZ Ex. 69 (2/8/18 email chain ending from Szol).

¹⁵⁸ VZ Ex. 2.

¹⁵⁹ CTL Ex. 41.02e “Credit Debit by BAN” Tab, Row 13 (listing the BANs CenturyLink directed Verizon to apply the Quarterly Billing Credit to for PY1Q1, which did not change during the course of the plan).

¹⁶⁰ CTL Ex. 48.07a.

agreements.¹⁶¹ The Dispute Notice covered CenturyLink’s claims from PY5Q1 through PY2Q3.

47. As explained above, each of CenturyLink’s disputes for the time period covered by the Dispute Notice was denied because CenturyLink had concurred in the credit amount. In my response to the Dispute Notice, therefore, I reiterated Verizon’s consistent position that the Billing Credits were not subject to dispute once paid.¹⁶² CenturyLink then initiated litigation by filing an Informal Complaint with the Commission on June 17, 2016; Verizon responded on August 3, 2016. CenturyLink replied on November 18, 2016.¹⁶³ The parties then engaged in extensive mediation discussions over the next 15 months.

1. Plan Year 3, Quarter 1 of the 2014 Service Agreement

48. Plan Year 3, Quarter 1 (“PY3Q1”) of the 2014 Service Agreement covered March 2016 to May 2016. Sage, on behalf of CenturyLink, submitted claim CLINKFAC0610B through Verizon’s dispute-resolution system disputing the PY3Q1 Billing Credit on January 12, 2017.¹⁶⁴ This was over five months after Verizon sent CenturyLink its final credit calculation for the quarter.¹⁶⁵ Because the Sage representative did not attach the Verizon Claim Form Excel spreadsheet, and did not fill out the customer audit number and adjustment serial number on the Status Spreadsheet it did attach, Verizon’s dispute-submission system did not accept the claim

¹⁶¹ CTL Ex. 40.22.

¹⁶² CTL Ex. 40.23.

¹⁶³ CenturyLink’s Reply (Nov. 18, 2016) (Letter from M. Martin (QCC) to S. Gray-Fields (FCC)).

¹⁶⁴ CTL Ex. 49.07. Verizon acknowledges that CenturyLink’s exhibit is an email from January 11, 2017. RMS processed intake of the claim on the following day.

¹⁶⁵ CTL Ex. 49.05.

for processing,¹⁶⁶ although it assigned it Batch ID 40953706.¹⁶⁷ CenturyLink fully concurred in the Billing Credit for PY3Q1 on February 16, 2018,¹⁶⁸ and Verizon issued the credit the same day. At this point Verizon considered the claim abandoned and barred by the 2014 Service Agreement.

2. Plan Year 3, Quarter 2 of the 2014 Service Agreement

49. Plan Year 3, Quarter 2 (“PY3Q2”) of the 2014 Service Agreement covered June 2016 to August 2016. CenturyLink submitted claim CCQWC134091 on March 17, 2017.¹⁶⁹ Verizon assigned Batch ID 40965465 to the claim. CenturyLink again used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁷⁰ Verizon has not been able to determine why RMS did not automatically resolve the dispute submission based on an invalid circuit ID, but I believe it was likely due to a glitch in the RMS system. Because the parties have since been engaged in active mediation and now litigation before the Commission, Verizon has not processed CenturyLink’s dispute and denied it. But Verizon disagrees with CenturyLink’s disputes on the merits. Further, CenturyLink fully concurred in the PY3Q2 Billing Credit on February 16, 2018,¹⁷¹ and Verizon issued it the same day. At this point Verizon considers the claim abandoned and barred by the 2014 Service Agreement.

3. Plan Year 3, Quarter 3 of the 2014 Service Agreement

50. Plan Year 3, Quarter 3 (“PY3Q3”) of the 2014 Service Agreement covered September 2016 to November 2016. CenturyLink submitted claim CCQWC134092, disputing

¹⁶⁶ See CTL Exs. 49.07, 49.07d.

¹⁶⁷ CTL Ex. 49.08.

¹⁶⁸ CTL Ex. 52.15.

¹⁶⁹ CTL Ex. 50.01.

¹⁷⁰ CTL Ex. 50.01b.

¹⁷¹ CTL Ex. 52.15.

Verizon's credit calculations for this quarter, on March 17, 2017.¹⁷² Verizon assigned Batch ID 40965461 to the claim. CenturyLink again used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁷³ Verizon has not been able to determine why RMS did not resolve the dispute submission automatically based on an invalid circuit ID, but I believe it was likely due to a glitch in the RMS system. Because the parties have since been engaged in active mediation and now litigation before the Commission, Verizon has not processed CenturyLink's dispute and denied it. But Verizon disagreed with CenturyLink's disputes on the merits. Further, CenturyLink fully concurred in the PY3Q3 Billing Credit on February 16, 2018,¹⁷⁴ and Verizon issued it the same day. At this point Verizon considers the claim abandoned and barred by the 2014 Service Agreement.

4. Plan Year 3, Quarter 4 of the 2014 Service Agreement

51. Plan Year 3, Quarter 4 ("PY3Q4") of the 2014 Service Agreement covered December 2016 to February 2016. CenturyLink submitted claim CCQWC136216, disputing Verizon's credit calculations for this quarter, on April 21, 2017.¹⁷⁵ Verizon assigned Batch ID 40965461 to the claim. CenturyLink again used BAN 412M520008196 as the circuit ID for the dispute submission.¹⁷⁶ Verizon has not been able to determine why RMS did not resolve the dispute submission automatically based on an invalid circuit ID, but I believe it was likely due to a glitch in the RMS system. Because the parties have since been engaged in active mediation and now litigation before the Commission, Verizon has not processed CenturyLink's dispute and

¹⁷² CTL Ex. 51.01.

¹⁷³ CTL Ex. 51.01b.

¹⁷⁴ CTL Ex. 52.15.

¹⁷⁵ CTL Ex. 52.01.

¹⁷⁶ CTL Ex. 52.01b.

denied it. But Verizon disagreed with CenturyLink’s disputes on the merits. Further, CenturyLink fully concurred in the Quarterly Billing Credit for PY3Q4 on February 16, 2018, and Verizon issued it the same day.¹⁷⁷ At this point Verizon considers the claim abandoned and barred by the 2014 Service Agreement.

III. CenturyLink’s Network-Optimization Disputes

52. Prior to July 2014, CenturyLink subscribed to Verizon’s Facilities Management System or “FMS.” Under FMS, Verizon arranged CenturyLink’s special-access circuits in its discretion, and CenturyLink only paid Verizon for those portions of the DS1 and DS3 circuits that it actually used. Once CenturyLink transitioned off FMS, it became CenturyLink’s responsibility to arrange its network, and Verizon began charging CenturyLink for the full DS3 and DS1 circuits CenturyLink ordered instead of only those portions of the circuits it used. CenturyLink, however, maintains that Verizon should have optimized CenturyLink’s network to reduce the number of DS3s used.¹⁷⁸ CenturyLink submitted three sets of claims purporting to raise this dispute.

53. On September 30, 2015, CenturyLink filed claims CCQWC106291, CCQWC106292, and CCQWC106294, objecting to “invalid circuit charges.”¹⁷⁹ The next day, CenturyLink submitted CCQWC106348, also objecting to “invalid circuit charges.”¹⁸⁰ That same day Sage, on behalf of CenturyLink, formally filed CLINKFAC0391 (a duplicate of CCQWC106291), CLINKFAC0391B (a duplicate of CCQWC106292), CLINKFAC0396 (a duplicate of CCQWC106348), and CLINKFAC0396B (a duplicate of CCQWC106294). Sage

¹⁷⁷ CTL Ex. 52.15.

¹⁷⁸ See Compl. ¶¶ 64-69.

¹⁷⁹ CTL Exs. 53.01, 54.01, 58.01.

¹⁸⁰ See CTL Ex. 57.01. Verizon acknowledges that CenturyLink’s exhibit is an email from 6:58 p.m. on September 30, 2015. RMS processed intake of the claim on the following day.

described the claims as follows: “DS3 CLF circuit converted from FMS to SPA in error. All T3 channels are spare and Verizon should not have converted over. As result circuit being flat rated under FRP to DS3 CLF rate.” Because CenturyLink included actual circuit IDs on these dispute submissions, RMS did not deny the claims automatically. On October 2, 2015, Verizon determined that these claims were duplicates of earlier disputes CenturyLink had previously submitted concerning charges for circuits CenturyLink had ordered disconnected.¹⁸¹ Verizon thus contacted Mr. Romero at CenturyLink to confirm that the claims were duplicates, giving the specific example of CCQWC106294. Mr. Aguilar followed up on October 27, 2015 to see if Mr. Romero had “a chance to verify these are duplicates.”¹⁸² On October 29, 2015, Mr. Romero responded affirmatively and gave my team permission to close the duplicates.¹⁸³ That same day, analysts on my team closed this set of disputes.

54. On October 29, 2015, CenturyLink submitted claims CCQWC107903, CCQWC107904, CCQWC107905, and CCQWC107906 claiming invalid circuit charges.¹⁸⁴ That same day Sage, on behalf of CenturyLink, submitted four identical claims under Claim IDs CLINKFAC0416, CLINKFAC0416B, CLINKFAC0417, and CLINKFAC0418. These claims were purportedly for “DS3 CLF circuit[s] converted from FMS to SPA in error. Excess number of FMS DS3 CLIF in place . . . and VZ did not manage facilitates to remove excess capacity prior to conversion. FRP flat rated for DS3 CLF being disrupted.” Because CenturyLink included actual circuit IDs on these dispute submissions, RMS did not deny the claims automatically. The system recognized that CenturyLink and Sage had submitted duplicate

¹⁸¹ VZ Ex. 51 (10/29/15 email chain ending from Romero).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ CTL Exs. 61.01, 62.02, 65.01, 67.01.

claims and denied some of them on that basis. Members of my team analyzed the remainder of the claims and denied them on November 19, 2015, explaining that, “[p]er the Guidelines of the Custom Solution Plan contract Verizon is counting the FMS circuits as described in the tariff.”¹⁸⁵

55. On March 10, 2016, CenturyLink submitted claims CCQWC115124, CCQWC115123, CCQWC115122, CCQWC115119, CCQWC115120, CCQWC115118, and CCQWC115117.¹⁸⁶ That same day Sage submitted identical claims on behalf of CenturyLink with the following corresponding claim numbers: CLINKFAC0391BTU1, CLINKFAC0391TU1, CLINKFAC0396BTU1, CLINKFAC0416TU1, CLINKFAC0416BTU1, CLINKFAC0417TU1, and CLINKFAC0418TU1. CenturyLink asserts that it submitted a dispute with the Claim IDs CLINKFAC0396TU1 and CCQWC115121 at the same time for **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** but Verizon has no record of receiving a dispute under either of those Claim IDs.¹⁸⁷ And CenturyLink has not provided any records of Verizon processing the claim or issuing a Verizon Claim ID. Because CenturyLink included actual circuit IDs on the other dispute submissions, RMS did not deny the claims automatically. And because Mr. Welch sent me the Dispute Notice and Request for Informal Dispute Resolution ten days after these claims were filed and the parties began mediation and settlement negotiations, my team did not formally close out these claims.

56. CenturyLink’s network-optimization claims do not in fact dispute Verizon’s calculation of the Billing Credits, but rather dispute Verizon’s underlying monthly charges – claiming, in effect, that Verizon should not have charged for certain DS3s at all. Verizon

¹⁸⁵ See, e.g., VZ Ex. 52 (11/19/15 email from submit.claim@verizon.com); VZ Ex. 52.1.

¹⁸⁶ CTL Exs. 55.01, 56.01, 59.01, 63.01, 64.01, 66.01, 68.01.

¹⁸⁷ CTL Ex. 60.01.

understands such disputes to be governed by separate dispute provisions in the 2014 Service Agreement. First, CenturyLink must file disputes for underlying charges with the clear label “Dispute Associated with 2014 Contract Tariff,” within 30 days of the end of each quarter.¹⁸⁸ This deadline is necessary because the parties agreed that Verizon would exclude disputed charges in calculating the Quarterly Billing Credit.¹⁸⁹ If CenturyLink had properly disputed these monthly charges within 30 days of the end of the quarter, Verizon would have worked CenturyLink’s disputes in the ordinary course of business and deducted the disputed amounts from the Billing Credits it remitted to CenturyLink for those quarters. By not disputing the monthly charges for these circuits at the appropriate time – and instead trying to combine them with separate claims about the Billing Credits – CenturyLink has circumvented that process. Second, the underlying charges “included in calculation of the Billing Credits will not be subject to any claims or disputes by Customer at any time in the future.”¹⁹⁰ Therefore, once Verizon issued the credit based on these charges, CenturyLink could not dispute the underlying charges.

57. The following table lists each of CenturyLink’s Network-Optimization Disputes. For the claims that cover multiple quarters, I have broken the claims down by the quarter in Column 2 of the Table. Column 3 lists the amount of the dispute broken down by each quarter. Column 4 lists the date that the dispute was submitted. Column 5 gives the 2014 Service Agreement Dispute Deadline for each quarter, which is “the thirtieth (30th) day following the end of each Quarter.”¹⁹¹ And the last column is the date on which Verizon approved the Billing Credits for payment, such that the underlying disputes are no longer subject to any disputes. I

¹⁸⁸ See 2014 Service Agreement, Ex. B § 8(c).

¹⁸⁹ See *id.* Ex. B § 8(a).

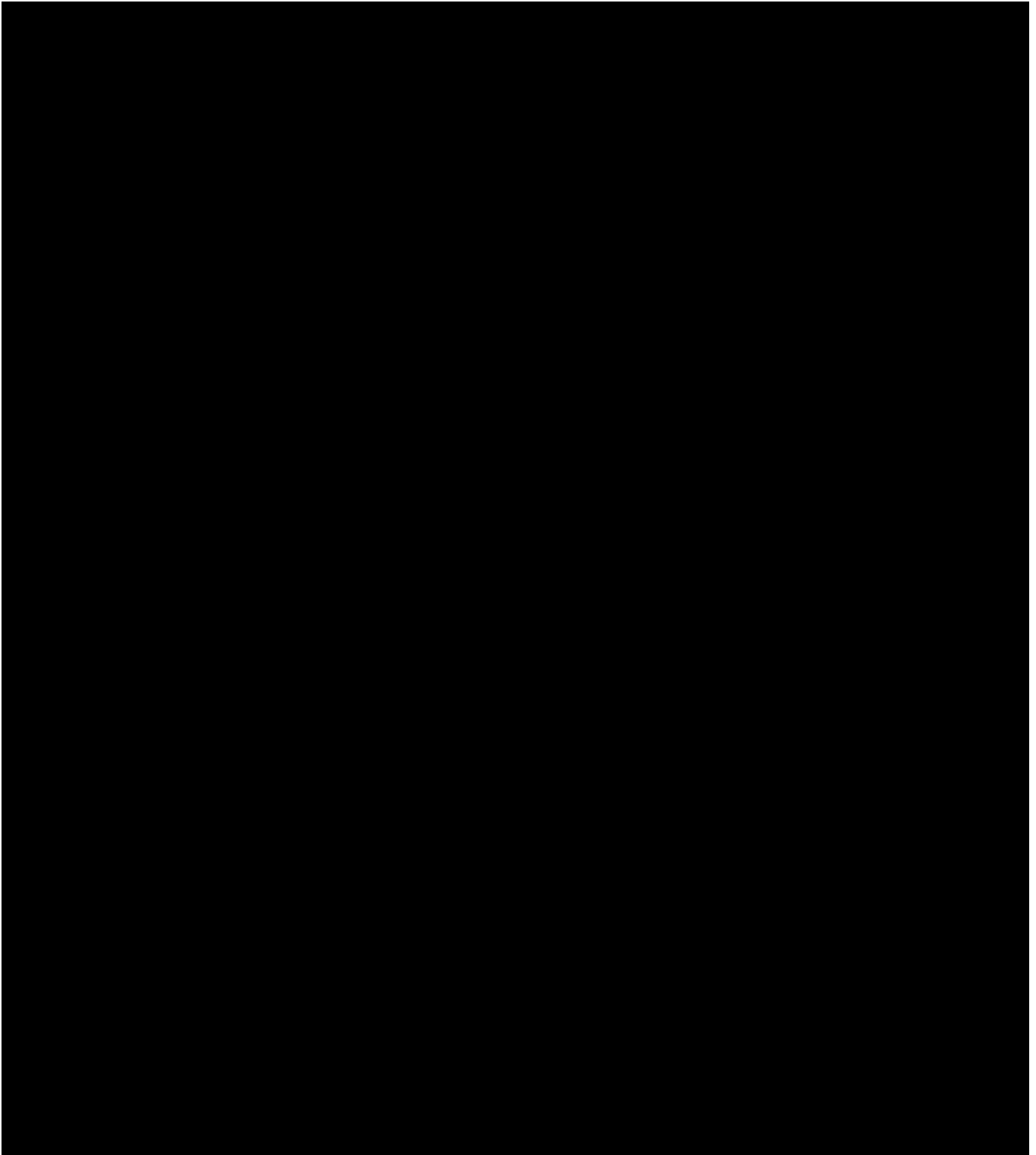
¹⁹⁰ See *id.* Ex. B § 8(e).

¹⁹¹ See *id.* Ex. B § 8(c).

have shaded in yellow the timely disputes, though Verizon properly denied those disputes on the merits. All other claims were filed outside the 30-day deadline. **[[BEGIN CONFIDENTIAL]]**

[REDACTED]

[REDACTED]



[[END CONFIDENTIAL]]

58. Even where CenturyLink’s dispute was timely, CenturyLink did not comply with the requirement that all disputes be labeled “Dispute Associated with 2014 Contract Tariff.” Because of this failure, Verizon was not properly on notice of the disputed amounts that it should have backed out of the Quarterly Billing Credits. For example, on September 29, 2015, Mr. Aguilar emailed Mr. Romero to obtain CenturyLink’s concurrence in the open disputes for PY2Q2, and Mr. Romero concurred later that afternoon.¹⁹² The following day, CenturyLink submitted disputes CCQWC106291, CCQWC106292, CCQWC106348, and CCQWC106294, which included disputes for PY2Q2.¹⁹³ CenturyLink did not label these disputes as being associated with the 2014 Contract Tariff, however. Because of that, Verizon did not identify the disputes and back them out of the quarterly Billing Credit. Moreover, CenturyLink never requested that Verizon calculate the Billing Credits without that amount in order to preserve CenturyLink’s underlying claim. Instead, on October 19, 2015, CenturyLink identified three additional alleged errors requiring a higher Billing Credit, before ultimately agreeing on November 17, 2015 to the amount Verizon had calculated.¹⁹⁴ Therefore, even CenturyLink’s timely disputes were not filed properly under the 2014 Service Agreement.

59. Although my team has left the claims submitted in March 2016 pending because of settlement negotiations and this litigation, Verizon believes that all of CenturyLink’s March 2016 disputes should be denied on the merits. And, as all of these disputes pertain to PY2Q3, the disputes were untimely because they were filed more than 30 days after the conclusion of the quarter. Should the Commission agree with Verizon’s position, Verizon intends to deny these disputes at the close of litigation.

¹⁹² VZ Ex. 11 at 1 (12/23/2015 email chain ending from Aguilar).

¹⁹³ See discussion *supra* ¶ 53.

¹⁹⁴ CTL Ex. 46.04 at 1-2.

CERTIFICATION

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April 9, 2018.

A handwritten signature in blue ink, appearing to read "David Szol", with a horizontal line drawn underneath the name.

David Szol

Tab E

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C. Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

DECLARATION OF CHRISTOPHER A. ALSTON

I, Christopher A. Alston, being above 18 years of age and competent to make this declaration, hereby submit this declaration in support of Verizon. I declare that:

1. I am the Director of Offer Management in the Verizon Partner Solutions group, a position I have held since 2014. The Verizon Partner Solutions group manages a variety of solutions and products that Verizon offers to its wholesale customers, including CenturyLink. I have worked in the area of Verizon’s wholesale offerings for approximately eighteen years.

2. For more than ten years, I have been involved in managing wholesale offerings for and negotiating transactions with CenturyLink. From 2007 to 2010, I was part of a team whose members negotiated the 2009 Service Agreement with CenturyLink. From 2010 to 2011, as the CenturyLink account manager, I managed the sale and negotiation of various services

provided to CenturyLink, including special-access services under the 2009 Service Agreement. From 2011 to 2014, I was the sales manager assigned to CenturyLink. In that capacity, I was personally involved in negotiating the parties' 2014 Service Agreement, including the flat-rate pricing structure that underpins the Billing Credits that CenturyLink disputes in this case. During the negotiations, I regularly communicated with CenturyLink on behalf of Verizon concerning the structure of the deal and the contractual language the parties were negotiating. Based on these professional responsibilities, and my duties in the ordinary course of business, I have developed an extensive familiarity with the negotiation and structure of the 2009 and 2014 Service Agreements. The facts set forth below are based on my personal knowledge.

I. Custom Solution Plan For CenturyLink

3. Throughout the time period relevant to this case, Verizon provided business data services to CenturyLink under a Custom Solution Plan ("CSP"), which offered favorable pricing to CenturyLink across multiple products and services. In constructing the CSP, the parties recognized that CenturyLink was purchasing tariffed special-access services as well as services from which the Commission had forbore from regulating ("Forbearance Services"), such as Ethernet services. Verizon constructed the CSP to provide CenturyLink with a bespoke arrangement accommodating the wide array of services it was purchasing from Verizon.

4. With respect to the Forbearance Services, Verizon and CenturyLink entered into a Master Services Agreement and several Attachments thereto. The MSA and its Attachments provided the framework through which Verizon provided CenturyLink with unregulated Ethernet Services – these generally consisted of Transparent LAN service and Verizon Optical Networking/Ethernet Private Line service, and Sonet Services, including Custom Connect

Service, Intellilight Broadband Transport Service, Digital Sonet Ring Service, Intellilight Entrance Facility Service, and Optical Wave Service.¹

5. With respect to regulated special-access services, Verizon and CenturyLink executed the 2009 and 2014 Service Agreements.² These Service Agreements were the product of extensive bilateral negotiations between the two parties. They governed Verizon’s provision to CenturyLink of special-access DS1 and DS3 services. The parties memorialized the terms of both Service Agreements in contract tariffs filed with the Commission.³

6. The Service Agreements were intertwined with certain components of the MSA. Under the CSP, the parties agreed to overall financial terms – such as credits or shortfall charges – pegged to CenturyLink’s overall level of spending across the various regulated and unregulated services included in the plan. For example, several MSA Attachments contemplated that

[[BEGIN CONFIDENTIAL]]

[REDACTED]

[REDACTED]

[REDACTED]⁴ [REDACTED]

[REDACTED]

[REDACTED]⁵ [REDACTED]

[REDACTED] [[END

¹ See generally CTL Ex. 1 (“MSA”) § 1 (describing scope of agreement); CTL Ex. 6 (MSA Att. 2) § 1.1; CTL Ex. 4 (“MSA Att. 13”) §§ 3.44, 3.45.

² The 2009 Service Agreement and 2014 Service Agreement are attached as Exhibits 3 and 5 to CenturyLink’s Formal Complaint, respectively.

³ See 2009 Service Agreement § 3(a); 2014 Service Agreement § 3(a).

⁴ See CTL Ex. 2 (MSA Att. 11) § 4; MSA Att. 13 §§ 5-6.

⁵ See MSA Att. 13 § 6.1.1 (explaining surcharge calculation).

CONFIDENTIAL]]⁶ In these ways and others, the administration of CenturyLink’s discount plan for special-access services was intertwined with the other components of the CSP.

7. That said, the Service Agreements remained standalone contracts with their own sets of rules applicable only to tariffed special-access services. The parties did not attach the Service Agreements to the MSA, and most of the MSA (and its Attachments) dealt solely with Forbearance Services to which the Service Agreements did not apply. Due to the breadth of the types of the Forbearance Services that CenturyLink purchased from Verizon, the MSA and its Attachments were amended and restated frequently. The Service Agreements, however, were not amended or restated – there were only two versions (the 2009 Agreement and the 2014 Agreement). The separation of the Service Agreements from the MSA ensured that the frequent amendments to the latter did not alter the terms of the former. It also allowed the parties to negotiate particular terms – such as restrictive dispute provisions – that applied to special-access services under the Service Agreements but not to the Forbearance Services under the MSA.

II. Flat Rates Under The 2009 And 2014 Service Agreements

8. In negotiating the 2009 and 2014 Service Agreements, Verizon had a basic objective: it was willing to offer steeply discounted special-access pricing in exchange for a few core concessions from CenturyLink. One of those concessions involved minimum revenue guarantees. Verizon was willing to offer steep rate discounts on DS1 and DS3 services only so long as CenturyLink continued to purchase large volumes of services that could guarantee a certain annual amount of revenue for Verizon. CenturyLink thus had to meet revenue commitments (across both special access and Forbearance Services) on an annual basis or pay a

⁶ See *id.* § 6.1.1 (providing that TDM Surcharge calculation depends on TDM Attainment Revenue); *id.* § 5.1 (providing that TDM Attainment Revenue depends on number of DS1 and DS3 “Units” under the Price Flex Deal).

surcharge.⁷ Second, Verizon insisted on obtaining streamlined procedures that sharply restricted CenturyLink’s ability to dispute Verizon’s calculation of CenturyLink’s discounted special-access pricing. Both concessions were a central part of the bargain that underpinned Verizon’s willingness to offer favorable pricing to CenturyLink.

9. In exchange for those concessions, Verizon agreed to deliver discounted special-access pricing through the provision of quarterly Billing Credits, on top of already-discounted monthly rates available under its Commitment Discount Plan (“CDP”). Verizon continued to bill CenturyLink on a monthly basis at its CDP rates.⁸ CenturyLink continued to pay those CDP tariffed rates on a monthly basis. But, as long as CenturyLink met all eligibility requirements set forth in the Service Agreements (such as maintaining 25,000 to 60,000 billed units of DS1 circuits every month),⁹ and subject to other terms thereof, CenturyLink received Billing Credits on a quarterly basis. The Billing Credits supplied the mechanism through which Verizon delivered discounted pricing to CenturyLink. They were calculated so that, once CenturyLink had received a credit for a quarter, it effectively had paid per-circuit flat rates that were significantly lower than the CDP rates available under Verizon’s base tariff.

10. The Billing Credits also allowed Verizon to design a dispute system that protected its interest in certainty and finality. Verizon placed great value on those principles in negotiating the Service Agreements. If Verizon was going to agree to provide CenturyLink with substantial discounts off its already-discounted CDP pricing, it wanted to avoid the uncertainty and administrative costs associated with billing disputes over the amount of those discounts. The

⁷ See *id.* §§ 5.1, 6.1.1; *id.* § 6.2 (providing for annual review of TDM Surcharge calculation based on TDM Qualifying Revenues).

⁸ See Verizon FCC Tariff No. 1 § 25.1; Verizon FCC Tariff No. 11 § 25.1.

⁹ See 2009 Service Agreement, Ex. B § 3; 2014 Service Agreement, Ex. B § 3.

Billing Credits offered a way to achieve that objective by allowing Verizon to obtain contractual protections barring CenturyLink from disputing the Billing Credits after the fact. Verizon’s core objective in designing those procedures was to ensure that, once Verizon issued a Billing Credit for a quarter, it could close the books on that quarter and have certainty that the credit amount (and the monthly charges underpinning those amounts) would not later be adjusted. This protection was necessary, in Verizon’s view, for it to efficiently administer the deal.

11. Verizon achieved those objectives by negotiating for a multifaceted dispute provision in both Service Agreements. *First*, the parties agreed that Verizon would issue a Billing Credit only on monthly charges that CenturyLink had fully paid without dispute.¹⁰ If CenturyLink refused to pay a monthly charge for any reason – or if it paid while disputing a charge – then CenturyLink forfeited its right to obtain a flat-rate discount on that charge. *Second*, CenturyLink agreed to raise any disputes concerning the monthly charges subject to the Billing Credit within 30 days of the end of the quarter; otherwise, CenturyLink waived its right to dispute such charges “at any time in the future.”¹¹ *Third*, the 2009 Service Agreement made clear that, no matter how CenturyLink’s monthly-charge disputes were later resolved, there could be “no adjustment to the Billing Credits.”¹² Together, those provisions ensured that, when Verizon paid a Billing Credit, it did so based on a fixed universe of fully paid charges for the quarter that was not later subject to change.

12. Finally, the parties also agreed that the Billing Credits themselves were “not subject to dispute.”¹³ Similarly, the Billing Credits could “in no event be subject to any late

¹⁰ See 2009 Service Agreement, Ex. B § 7(e)(i); 2014 Service Agreement, Ex. B § 8(a).

¹¹ 2009 Service Agreement, Ex. B § 7(e)(ii)-(iii); 2014 Service Agreement, Ex. B § 8(c), (e).

¹² 2009 Service Agreement, Ex. B § 7(e)(v).

¹³ 2009 Service Agreement, Ex. B § 7(e)(vii); 2014 Service Agreement, Ex. B § 8(f).

payment, interest or penalty.”¹⁴ In other words, once Verizon paid the Billing Credit for a quarter, the credit amount was final and could not change later for any reason – thus permitting Verizon to close its books on the quarter. Verizon would not have agreed to the Service Agreements without these interlocking protections.

13. At the same time, the Billing Credits provided extraordinarily favorable pricing to CenturyLink. Due to the large volume of special-access services CenturyLink purchased, CenturyLink already qualified for discounted pricing under Verizon’s CDP.¹⁵ The Service Agreements that the parties negotiated delivered steep discounts off of those already-discounted tariffed rates. Those discounts were substantial, and they grew over time. I have analyzed CenturyLink’s net discount in light of the historical data, and, based on that analysis, I have determined that CenturyLink achieved an overall discount that began at approximately **[[BEGIN**

CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[[END CONFIDENTIAL]]

14. These discounts delivered substantial value to CenturyLink. The reason that the discounts grew so dramatically over time – with credit amounts starting out at a value of approximately **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** per month and growing by the end to approximately **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** per month – is that the value of CenturyLink’s special-access purchases

¹⁴ 2009 Service Agreement, Ex. B § 7(e)(viii); 2014 Service Agreement, Ex. B § 8(g).

¹⁵ See Verizon FCC Tariff No. 1 § 25.1; Verizon FCC Tariff No. 11 § 25.1.

increased dramatically. CenturyLink's ability to retain volumes grew substantially because Verizon's flat-rate pricing plan enabled CenturyLink to win more special-access business, particularly more expensive high mileage circuits, during this time period. From that perspective, the Price Flex Deal was a major success for CenturyLink. Indeed, even taking its allegations as true – assuming that Verizon improperly classified all of the circuits identified in the Complaint (which is not true) – the amount in dispute pales in comparison to the overall value that CenturyLink extracted from the Price Flex Deal.

15. CenturyLink's discounts were a function of the low, fixed, per-unit flat rates that were spelled out in the Service Agreements. Those flat rates were the focus of the parties' negotiations, and their discussions about the rest of the credit-calculation formulas took place against the backdrop of the specific per-unit rates the parties agreed should apply. In negotiating the Service Agreements, the parties agreed first on the per-unit flat rates and then negotiated the rest of the Service Agreement – including the broader formula for calculating the Billing Credits – so that it would match up with those agreed-upon flat rates. Indeed, the particular per-unit flat rates that were ultimately spelled out in the Service Agreements – which, by their nature, required the parties to come to a common understanding of how "units" should be counted – were the centerpiece of the parties' pricing negotiations.

16. On May 6, 2009, Verizon and CenturyLink entered into the 2009 Service Agreement and agreed upon the following per-unit flat rates to be charged for the five-year period ending on February 28, 2014: **[[BEGIN CONFIDENTIAL]]**

16

[[END CONFIDENTIAL]]

17. On February 14, 2014, Verizon and CenturyLink entered into the 2014 Service Agreement to go effective, upon the expiration of the 2009 Service Agreement, for the three-year period ending on February 28, 2017. Compared to the 2009 Service Agreement, the 2014 Service Agreement provided for even lower per-unit flat rates (with the addition of separate flat rates applicable to DS1 units with mileage and DS1 units without mileage) as follows: [[BEGIN CONFIDENTIAL]]

17

[[END CONFIDENTIAL]]

18. Under the Service Agreements, these flat rates resulted from a formula that was pegged to Verizon's historical average revenue per unit. In essence, the parties agreed to set the

¹⁶ See 2009 Service Agreement, Ex. B Att. 1.

¹⁷ See 2014 Service Agreement, Ex. B Att. 1.

per-unit flat rates at a discounted percentage off the average per-unit revenue that Verizon had previously collected from CenturyLink. To effectuate those calculations in the Service Agreements, the parties first calculated the total amount CenturyLink was charged for special-access services during a specified three-month “benchmark” period.¹⁸ The total billed amount from those three months was divided by the total number of “billed units” (the total number of circuits for which CenturyLink was charged tariffed rates) to produce average benchmark per-unit numbers (also referred to as average revenue per unit, or “ARPU”). Then, Verizon and CenturyLink agreed on a percentage discount that CenturyLink should receive off the ARPU benchmarks. The specified flat rates were the result of that percentage discount.

19. For example, under the 2014 Service Agreement, the discounted flat rate of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** per Billed DS3 CLS Unit for the first plan year equaled 54% of the benchmark per-unit ARPU price of **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**, representing a 46% discount from the tariffed rates CenturyLink had been charged on average for each Billed DS3 CLS Unit from October to December 2013 price (“DS3 CLS ARPU”). Tables 3 and 4 show the amount of rate reductions to which the parties agreed for the first plan year under the 2009 and 2014 Service Agreements, respectively: **[[BEGIN CONFIDENTIAL]]**

¹⁸ The benchmark period was January, February, and March 2009 for the 2009 Service Agreement and October, November, and December 2013 for the 2014 Service Agreement. See 2009 Service Agreement, Ex. B § 7; 2014 Service Agreement, Ex. B § 7.

19

20

[[END CONFIDENTIAL]]

20. The calculation of benchmark per-unit prices was critical in making the agreed-upon rate reductions (54% in the example above) an “apples-to-apples” comparison. Tariffed rates, which dictated monthly charges, were based on individual circuits’ various rate elements such as exact mileage; therefore, the charges for individual circuits varied widely. The benchmark per-unit prices represented how much CenturyLink had been charged on average for one billed “unit,” regardless of individual circuits’ exact mileage and other billing attributes. Further, given that the agreed-upon flat rates were per-unit flat rates to be multiplied by the count

¹⁹ See 2009 Service Agreement, Ex. B § 7, Tbl. 1; *id.* Ex. B Att. 1.

²⁰ See 2014 Service Agreement, Ex. B § 7, Tbl. 1.

²¹ Under the 2014 Service Agreement, the amount of rate reduction per Billed DS3 CLF Unit was noted as 60.61% of DS3 CLS Plan Year 1 Flat Rate, which was 54.00% of DS3 CLS ARPU, and, therefore, the rate reduction per Billed DS3 CLF Unit equaled 32.73% of DS3 CLS ARPU. See 2014 Service Agreement, Ex. B § 7, Tbl. 1.

of billed units, the calculation of benchmark per-unit prices ensured that the parties had reached agreement on the methodology by which the billed units were to be counted. For that reason, the agreed-upon “flat rates” – which, again, were the key focus of the contract negotiations – depended on a shared understanding of how “units” should be counted.

21. As shown in Tables 3 and 4, the parties used the benchmark price per Billed DS1 Unit (“DS1 ARPU”) and the price per Billed DS3 CLS Unit (“DS3 CLS ARPU”) to set forth how the agreed-upon rate reductions yielded the agreed-upon discounted flat rates.

22. The 2009 and 2014 Service Agreements provided step-by-step instructions on how the DS1 ARPU and DS3 CLS ARPU should be calculated. Under the 2009 Service Agreement, DS1 ARPU was calculated by dividing the total tariffed rates that CenturyLink had paid for DS1 circuits during the benchmark period **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[[END CONFIDENTIAL]].

23. The total tariffed charges that CenturyLink paid during the benchmark periods were as follows: **[[BEGIN CONFIDENTIAL]]**

22

[[END CONFIDENTIAL]]

24. Table 6 below summarizes the counts of “billed units” that the parties agreed upon for the purpose of calculating benchmark per-unit prices, which were then multiplied by the agreed-upon rate reductions to produce agreed-upon discounted flat rates. [[BEGIN CONFIDENTIAL]]

23

[[END CONFIDENTIAL]]

25. In this way, the flat rates at the core of Service Agreements were tethered to the “unit” counts from the three-month benchmark periods used in both Agreements. Different counts of Billed DS1 Units or Billed DS3 CLS Units during the reference periods would have yielded different per-unit flat rates. That is because the flat rates were pegged to the ARPU in each service class, and ARPU depended on the number of “units.” For example, counting fewer DS3 CLS circuits as billed “units” during the benchmark period would have yielded a higher

²² See 2009 Agreement, Ex. B § 7; *id.*, Ex. B Att. 1; 2014 Agreement, Ex. B § 7; *id.* Ex. B Att. 1.

²³ See 2009 Agreement, Ex. B § 7; *id.* Ex. B Att. 1; 2014 Agreement, Ex. B § 7; *id.* Ex. B Att. 1.

DS3 CLS ARPU (because the total monthly charges for DS3 CLS services in Table 5 would have been divided by a smaller denominator to produce a higher per-unit price). A higher DS3 CLS ARPU, in turn, would have yielded a higher DS3 CLS flat rate. Accordingly, the methodology by which Verizon and CenturyLink counted the “units” during the benchmark periods was the foundation of the per-unit flat rates under the Service Agreements.

III. CenturyLink’s Unit Counts

26. In this case, CenturyLink challenges how Verizon counted “units” in calculating Billing Credits during a four-year period from March 2013 to February 2017. As described above, the 2014 Service Agreement specified that there were **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** Billed DS1 Units and **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** Billed DS3 CLS Units during October, November, and December 2013.²⁴ And as further described above, any other unit counts would have yielded per-unit flat rates different from the agreed-upon rates set forth in the 2014 Service Agreement.²⁵

27. I have reviewed an Excel spreadsheet that I understand CenturyLink sent to Verizon during the Informal Complaint proceeding, entitled “CONFIDENTIAL - CTL Verizon FRP Circuit List Oct’13 to Dec’13 09-06-16.xls.” The spreadsheet was last modified on September 6, 2016, by Tiffany Brown, on whose declaration CenturyLink relies to support its claims in this case. It provides a list of all of the circuits that CenturyLink believes should have been counted as “units,” under CenturyLink’s methodology, during the October 2013 – December 2013 reference period. The spreadsheet, which I call “CenturyLink’s 2014 Benchmark Unit Count,” is attached as Exhibit 72.

²⁴ See *supra* ¶¶ 22, 24 & Tbl. 6; 2014 Service Agreement, Ex. B Att. 1.

²⁵ See *supra* ¶¶ 18-25.

28. In CenturyLink’s 2014 Benchmark Unit Count, CenturyLink lists **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** DS3 CLS circuits that it contends should have been counted as Billed DS3 CLS Units for October, November, and December 2013.²⁶ That does not match the “unit” count **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** to which it agreed in the 2014 Service Agreement.²⁷ If CenturyLink were correct about the number of DS3 CLS “units” during those three months, it would have yielded different flat rates. As explained above, the “DS3 CLS ARPU” was calculated by dividing the total tariffed rates that CenturyLink had been charged and paid for special-access DS3 CLS circuits during the benchmark period **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**.²⁸ **[[END CONFIDENTIAL]]**²⁹ And that higher ARPU, in turn, would have led to higher flat rates.

29. I prepared an Excel spreadsheet, attached as Exhibit 73, which I call “2014 Flat Rate Calculation.” The 2014 Flat Rate Calculation shows how CenturyLink’s methodology of counting “units” would result in a higher benchmark price and inevitably higher per-unit flat rates. Indeed, the higher DS3 CLS ARPU **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

²⁶ See VZ Ex. 72 Tab “CIRCUIT LIST OCT’13-DEC’13,” **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** CenturyLink also counts as “units” several DS3 CLS circuits located in West Virginia that Verizon did not count as “units.” See, e.g., *id.* Row 28581 (Circuit 40HFGS400276CM), Row 28583 (Circuit 40HFG400678CW). CenturyLink does not explain why these West Virginia circuits should have been counted as “units” under either Service Agreement.

²⁷ See 2014 Service Agreement, Ex. B Att. 1.

²⁸ See VZ Ex. 73 (Verizon analysis demonstrating this discrepancy).

²⁹ See *id.*

[REDACTED]

[REDACTED] 30

[REDACTED] 31

[REDACTED]

[[END CONFIDENTIAL]]

30. The flat rates were the focal point of Verizon’s and CenturyLink’s extensive negotiations. CenturyLink’s methodology of counting “units,” as demonstrated by the calculations above, is inconsistent with the benchmark “unit” counts and agreed-upon flat rates set forth in the 2014 Service Agreement.

31. Similarly, in CenturyLink’s 2014 Benchmark Unit Count, CenturyLink lists

[[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] 32 [REDACTED]

[REDACTED] 33

³⁰ See VZ Ex. 73 Tab “Flat Rates Per CTL Calculation,” Cells F20-F22 (flat rates per DS3 CLF unit for Plan Years 1, 2, and 3, respectively); *id.* Cells F25-F27 (flat rates per DS3 CLS unit for Plan Years 1, 2, and 3, respectively).

³¹ See *id.* Cells F20-F22, F25-F27.

³² See VZ Ex. 72 Tab “CIRCUIT LIST OCT’13-DEC’13,” [[BEGIN CONFIDENTIAL]]

[REDACTED] [[END CONFIDENTIAL]]

³³ See 2014 Service Agreement, Ex. B Att. 1.

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]³⁴ [REDACTED] **[[END CONFIDENTIAL]]** is not large enough to result in significantly higher flat rates for DS1 circuits; however, the difference in DS1 ARPU calculations illustrates that CenturyLink's methodology of counting "units" is inconsistent with the terms of the 2014 Service Agreement.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on April 11, 2018.


Christopher A. Alston

³⁴ VZ Ex. 73 Tab "Flat Rates Per CTL Calculation," Cells C7, F7.

Tab F

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C. Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

DECLARATION OF SUSAN FOX AND MARIAN HOWELL

1. I, Susan Fox, being above 18 years of age and competent to make this declaration, hereby submit this declaration in support of Verizon. I declare that I am a Product Manager with Verizon Partner Solutions and have held this position since January 2009. Currently, I am responsible for management, product development, marketing, and pricing of Special Access, SONET, and Private Line services. In addition, I am responsible for managing wholesale broadband services, high capacity UNEs, and Resale services. Before assuming my current role, I was responsible for other wholesale core services such as Local Products, Special Access, Switched Access, and Billing and Collection. I have more than 30 years' experience with Verizon and its predecessor companies. Based on that experience, I have developed an extensive familiarity with Verizon's various wholesale data products, including its legacy Facilities

Management Service (“FMS”). I have personal knowledge of the facts set forth below and am primarily responsible for Paragraphs 3-6.

2. I, Marian Howell, being above 18 years of age and competent to make this declaration, join this declaration in support of Verizon. I declare that I was employed by Verizon and its predecessor companies for more than 35 years, until I retired from the company in August 2013. During my tenure at Verizon, I was familiar with the development of FMS, and, from 2004 until 2008, I was the product manager responsible for FMS. I also had various other positions and responsibilities in Verizon’s wholesale organization, and eventually I again became the product manager for FMS. I held those responsibilities until I retired. I have personal knowledge of the facts set forth below and am primarily responsible for Paragraphs 7-8.

3. In 1993, Verizon introduced FMS in FCC Tariff No. 1. FMS was a legacy service that allowed customers to pay for special-access capacity at discounted rates calculated on a DS0-equivalent basis.¹ If a customer used only a portion of a channelized DS1 or DS3 circuit under FMS, it paid only for a portion of the circuit it actually used.

4. Among other things, FMS allowed Verizon to configure special access circuits to minimize customer costs.² This, in turn, allowed Verizon to offer customers lower pricing. The tradeoff that allowed customers to opt into more favorable DS0-equivalent pricing without having to groom circuits or otherwise optimize the DS1 and DS3 network facilities they purchased from Verizon was the core business premise on which Verizon offered FMS.

¹ See Public Notice, *Comments Invited on Application of Verizon Delaware LLC, Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia Inc. to Discontinue Domestic Telecommunications Services*, 23 FCC Rcd 18108, 18108 (2008).

² See Order, *Bell Atlantic Telephone Cos. Tariff F.C.C. No. 1 Facilities Management Service*, 8 FCC Rcd 8214, ¶ 6 (1993).

5. For Verizon, FMS provided an opportunity to optimize the configuration of our own network³ in accordance with our network objectives.⁴ For our customers, FMS was about lower prices, which Verizon was able to offer because FMS allowed us to maximize our own network optimization and to engineer and design our network in light of our own needs and assessment of network and economic efficiencies. By contrast, FMS was not about optimizing our customers' network efficiency. In my experience with FMS, I am not aware of a customer (other than CenturyLink in this dispute) ever asserting that Verizon bore responsibility under FMS for optimizing its network from the customer's perspective.

6. The Description and Justification we filed with the FMS tariff in 1993 discussed several administrative benefits our customers would enjoy under FMS. That section includes no mention of customer network efficiency. And to the extent our customers enjoyed the benefits of network efficiencies, it was in the form of the resulting lower prices. It would not have made sense for Verizon, as a seller of service, to manage the network efficiency of our customers, including CenturyLink, which bought our services. Indeed, Verizon's original business justification for offering FMS did not contemplate that Verizon would provide favorable DS0-equivalent pricing while leaving customers with the prerogative to configure the special-access network.

7. Leading up to when we discontinued FMS, we provided all our customers (including CenturyLink) with years of notice, during which they could prepare. As we did with

³ *See id.*

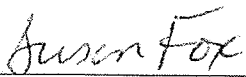
⁴ *See* Bell Atlantic FCC Tariff No. 1, Transmittal No. 586, Description and Justification at 11 (July 20, 1993) ("FMS permits [Verizon] to fully utilize existing special access facilities that had previously been dedicated to the customer. This increases the available network capacity and reduces the need for capital expenditures. [Verizon] is able to pass these cost savings on to the customer.").

other wholesale customers, we communicated regularly with CenturyLink during that transition period about the eventual conversion off of FMS. And at all times that CenturyLink subscribed to FMS, including during the transition period, CenturyLink had access to how Verizon provisioned FMS circuits for CenturyLink. In fact, Verizon typically afforded CenturyLink and other FMS customers the opportunity to recommend or request certain network facility assignments, and we endeavored to meet those requests. Further, CenturyLink was actively involved in configuring its own network under FMS, including grooming circuits and establishing collocations to increase its own network efficiency. CenturyLink thus could and should have – based on information available to it – used the transition period to configure its own network in a way that met its own post-FMS objectives.

8. During the transition period, we did not know what plans CenturyLink might have for particular circuits, including currently empty circuits. So we could not and did not simply disconnect DS3 CLF facilities during the transition off FMS. Instead, we worked with CenturyLink and other customers to help facilitate that transition. The only party with full information about CenturyLink's own post-FMS network objectives – and thus the only party with the ability to configure the network to maximize CenturyLink's own economic efficiencies – was CenturyLink. It would not have been feasible, nor consistent with industry custom and practice, for Verizon to attempt to perform such a task on CenturyLink's behalf.

CERTIFICATION

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April 11, 2018.



Susan Fox

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April __, 2018.

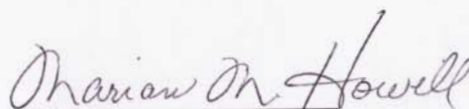
Marian Howell

CERTIFICATION

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April __, 2018.

Susan Fox

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed
on April 11, 2018.


Marian Howell

Tab G

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C., Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

VERIZON’S INFORMATION DESIGNATION

Defendants (individually and collectively, “Verizon”), pursuant to 47 C.F.R. § 1.724(f) and the Enforcement Bureau’s February 9, 2018 letter ruling¹, submit this information designation in connection with the above-captioned matter.

I. PERSONS WITH KNOWLEDGE – 47 C.F.R. § 1.724(f)(1)

Pursuant to Section 1.724(f)(1) of the Commission’s rules, Verizon sets forth below the name, address, and position of each individual at Verizon or, to Verizon’s knowledge, at CenturyLink, who Verizon believes to have first-hand knowledge of the facts alleged with particularity in Verizon’s Answer, along with a description of the facts within any such

¹ See Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, to Brendon P. Fowler, Counsel for CenturyLink, and Curtis L. Groves, Counsel for Verizon (Feb. 9, 2018) (“February 9 Letter Ruling”).

individual's knowledge. Verizon reserves the right to amend this list as appropriate based on additional information it may discover.

1. Name: Patricia Mason
 Address: Verizon, 6929 N. Lakewood Avenue, Tulsa, OK 74117
 Position: Senior Analyst (Verizon)
 Description of facts within this person's knowledge: The administration of Price Flex Deal and the process by which Verizon calculated and issued quarterly Billing Credits to CenturyLink.
2. Name: Anne Grimm
 Address: CenturyLink Communications, LLC, 4650 Lakehurst Road, Dublin, OH 43016
 Position: Senior Lead Carrier Relations Consultant (CenturyLink)
 Description of facts within this person's knowledge: CenturyLink's review of and concurrence in Verizon's calculation of quarterly Billing Credits.
3. Name: Joseph Romero
 Address: CenturyLink Communications, LLC, 5325 Zuni Street, 3rd Floor, Denver, CO 80221
 Position: Senior Financial Analyst (CenturyLink)
 Description of facts within this person's knowledge: CenturyLink's review of and concurrence in the open dispute amounts for the calculation of quarterly Billing Credits, and CenturyLink's submission of disputes and their resolution.
4. Name: David Szol
 Address: Verizon, 6929 N. Lakewood Avenue, Tulsa, OK 74117
 Position: Senior Manager (Verizon)
 Description of facts within this person's knowledge: CenturyLink's submission of disputes and their resolution, Verizon's standard dispute procedures, and Verizon's general practices regarding its electronic Receivables Management System ("RMS").
5. Name: Christopher A. Alston
 Address: Verizon, 703-713 E. Grace Street, Richmond, VA 23219
 Position: Director of Marketing (Verizon)
 Description of facts within this person's knowledge: Verizon's negotiation of wholesale contracts with CenturyLink and the structure of Price Flex Deal.
6. Name: Duane McPherson
 Address: Verizon, 600 Hidden Ridge, Irving, TX 75038
 Position: Project Manager (Verizon)

Description of facts within this person's knowledge: Verizon's calculation of quarterly Billing Credits, the negotiation of wholesale contracts with CenturyLink, and the structure of Price Flex Deal.

7. Name: Susan Fox
Address: Verizon, 22001 Loudoun County Parkway, Ashburn, VA 20147
Position: Product Manager (Verizon)
Description of facts within this person's knowledge: Verizon's special-access products and services, including FMS.
8. Name: Cheryl Sudor
Address: Verizon, 416 7th Avenue, Pittsburgh, PA 15219
Position: Product Manager (Verizon)
Description of facts within this person's knowledge: Verizon's monthly billing practices under FMS and standard special-access plans.
9. Name: Bradley Rhotenberry
Address: Verizon, 6929 N. Lakewood Avenue, Tulsa, OK 74117
Position: Consultant (Verizon)
Description of facts within this person's knowledge: The administration of Price Flex Deal and the process by which Verizon calculated and issued quarterly Billing Credits to CenturyLink.
10. Name: Joan DiMatteo-Hunt
Address: Verizon, 6929 N. Lakewood Avenue, Tulsa, OK 74117
Position: Senior Manager (Verizon)
Description of facts within this person's knowledge: Verizon's payment of Billing Credits for Plan Year 3 under the 2014 Service Agreement.
11. Name: Patrick Welch
Address: CenturyLink Communications, LLC, 5325 Zuni Street, 3rd Floor, Denver, CO 80221
Position: Manager of Finance (CenturyLink)
Description of facts within this person's knowledge: CenturyLink's concurrence in quarterly Billing Credits and CenturyLink's submission of disputes.
12. Name: Tiffany Brown
Address: Synchronoss Technologies Inc., 12102 Sunset Hills Road, Reston, VA 20190
Position: Outside consultant retained by CenturyLink
Description of facts within this person's knowledge: CenturyLink's position on how the quarterly Billing Credits should have been calculated and CenturyLink's submission of disputes.

13. Name: Patrick Lowell
Address: Synchronoss Technologies Inc., 12102 Sunset Hills Road,
Reston, VA 20190
Position: Outside consultant retained by CenturyLink
Description of facts within this person's knowledge: CenturyLink's position on
how quarterly Billing Credits should have been calculated and CenturyLink's
submission of disputes.
14. Name: Marian Howell
Address: Unknown (retired from Verizon)
Position: formerly Product Manager
Description of facts within this person's knowledge: Verizon's practices under
FMS.

**II. DESCRIPTION OF DOCUMENTS, DATA COMPILATION, AND
TANGIBLE THINGS IN THE DEFENDANT'S POSSESSION, CUSTODY,
OR CONTROL – 47 C.F.R. § 1.724(f)(2)**

The Commission has waived the requirement under 47 C.F.R. § 1.724(f)(2) that Verizon describe all documents, data compilations, and tangible things in its possession, custody, or control that are relevant to the facts alleged with particularity in the answer. *See* Letter Ruling, at 2. In lieu thereof and pursuant to the February 9 Letter Ruling, Verizon is attaching as Exhibits to its Answer copies of the affidavits, documents, and data compilations upon which it relies to support the facts alleged and legal arguments made in the Answer. To the extent Verizon relies on CenturyLink's Exhibits to the Formal Complaint, Verizon has provided citations thereto.

**III. DESCRIPTION OF MANNER OF IDENTIFICATION OF PERSONS
WITH KNOWLEDGE AND RELEVANT DOCUMENTS, DATA
COMPILATION, AND TANGIBLE THINGS – 47 C.F.R. § 1.724(f)(3)**

Verizon prepared this information designation in response to the Formal Complaint filed by CenturyLink, based on Verizon's investigation of the facts alleged in that Complaint, as well those previously alleged in CenturyLink's Informal Complaint that had preceded the Formal Complaint. Verizon identified persons with potentially relevant information based on the allegations that CenturyLink made in those Complaints.

Counsel for Verizon – primarily outside counsel at Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C. and Associate General Counsel Curtis Groves – contacted the subject-matter experts within the pertinent areas of the company with potential knowledge of the issues raised by and facts relevant to CenturyLink’s Informal Complaint and Formal Complaint. The exhibits and documents on which Verizon relies in its Answer were collected primarily from the files of Patricia Mason, David Szol, and Lisa Dover, as well as through searches of Verizon’s in-house Customer Insight System and RMS. Verizon also reviewed other materials that the parties exchanged during the Informal Complaint process, as well as information in the files of Anna McDermott, Christopher A. Alston, Duane McPherson, Raphael Mingo, and Joseph Aguilar.

Dated: April 12, 2018

Respectfully submitted,



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Attorneys for Verizon

Tab H

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC)	
f/k/a Qwest Communications Company,)	
LLC,)	
)	
Complainant,)	
v.	)	Docket No. 18-33
	)	File No. EB-18-MD-001
Verizon Services Corp.; Verizon)	
Virginia LLC; Verizon Washington,)	
D.C., Inc.; Verizon Maryland LLC;)	
Verizon Delaware LLC; Verizon)	
Pennsylvania LLC; Verizon New Jersey)	
Inc.; Verizon New York Inc.; Verizon)	
New England Inc.; Verizon North LLC;)	
Verizon South Inc.,)	
)	
Defendants.)	

VERIZON’S REQUEST FOR INTERROGATORIES

Pursuant to 47 C.F.R. § 1.729(a) and the Commission’s March 13, 2018 Notice of Formal Complaint, Defendants¹ hereby submit and serve on CenturyLink Communications LLC, f/k/a Qwest Communications Company, LLC (“CenturyLink”) this Request for Interrogatories. Verizon requests that CenturyLink respond to these Interrogatories, in writing and under oath, in the time provided by 47 C.F.R. § 1.729(b) and in accordance with the Commission’s rules and the Instructions and Definitions set forth herein.

¹ Defendants are Verizon Services Corp.; Verizon Virginia LLC; Verizon Washington, D.C., Inc.; Verizon Maryland LLC; Verizon Delaware LLC; Verizon Pennsylvania LLC; Verizon New Jersey Inc.; Verizon New York Inc.; Verizon New England Inc.; Verizon North LLC; and Verizon South Inc. (individually and collectively, “Verizon”).

DEFINITIONS

1. The term “Verizon” shall mean Verizon Services Corp.; Verizon Virginia LLC; Verizon Washington, D.C., Inc.; Verizon Maryland LLC; Verizon Delaware LLC; Verizon Pennsylvania LLC; Verizon New Jersey Inc.; Verizon New York Inc.; Verizon New England Inc.; Verizon North LLC; and Verizon South Inc. and includes, without limitation: (a) any of their predecessor or successor companies or corporations and (b) any of their present or former officers, directors, employees, consultants, agents, attorneys, or others acting or purporting to act on their behalf.

2. The terms “CenturyLink” and “you” shall mean CenturyLink Communications LLC, f/k/a Qwest Communications Company, LLC and includes, without limitation: (a) any of its divisions, departments, or other organizational or operational units; (b) any of its parent, subsidiary, or affiliate companies; (c) any of its predecessor or successor companies or corporations; and (d) any of its present or former officers, directors, employees, consultants, agents, attorneys, or others acting or purporting to act on its behalf.

3. “All” means all or any, and “any” means all or any.

4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all answers that might otherwise be outside its scope.

5. “Include” or “including” denotes a portion of a larger whole and is used without limitation.

6. “Concerning” or “concerns” means in whole or in part, relating to, referring to, consisting of, reflecting, discussing, constituting, describing, analyzing, studying, evidencing, incorporating, or in any way pertaining to or having any logical or factual connection.

7. “Relating to” or “related to” means in whole or in part, constituting, containing, referring to, discussing, dealing with, describing, reflecting, or pertaining to in any way whatsoever.

8. “Document” or “documents” shall mean, without limitation, any written, recorded, or graphic material of any kind within your possession, custody, or control, whether in paper or electronic form. The term document(s) includes electronically stored information.

9. “Person” means a natural person, corporation, or other business organization.

10. “Communication” or “communications” means communication(s) of every form and manner by which information may be transmitted or received, whether written, oral, or otherwise.

11. “Commitment Discount Plan” or “CDP” refers to the pricing plan that Verizon offered pursuant to Tariff No. 1 § 25.1 and Tariff No. 11 § 25.1.

12. “Complaint” refers to CenturyLink’s Formal Complaint filed on February 26, 2018 in the above-captioned matter.

13. “2009 Service Agreement” refers to the Service Agreement signed by CenturyLink and Verizon in April and May 2009, respectively, governing Verizon’s provision of special-access services to CenturyLink. The 2009 Service Agreement includes Exhibits A, B, and C, and Attachment 1 to Exhibit B. Exhibit B to the 2009 Service Agreement was filed as a contract tariff and appeared at Tariff No. 1 § 21, Option 57; Tariff No. 11 § 32, Option 55; and Tariff No. 14 § 21, Option 29. The 2009 Service Agreement was in effect from March 1, 2009 through February 28, 2014.

14. “2014 Service Agreement” refers to the Service Agreement signed by CenturyLink and Verizon on February 14, 2014, governing Verizon’s provision of special-access

services to CenturyLink. The 2014 Service Agreement included Exhibits A, B, and C, and Attachment 1 to Exhibit B. Exhibit B to the 2014 Service Agreement was filed as a contract tariff and appeared at Tariff No. 1 § 21, Option 65; Tariff No. 11 § 32, Option 65; and Tariff No. 14 § 21, Option 34. The 2014 Service Agreement was in effect from March 1, 2014 through February 28, 2017.

15. “Billing Credits” or “Credits” refer to the credits Verizon issued to CenturyLink each quarter under the 2009 and 2014 Service Agreements or the credits Frontier Communications Corporation (“Frontier”) issued to CenturyLink each quarter under the applicable agreement and contract tariffs. With respect to the Billing Credits issued by Verizon, the credit amount for each quarter equaled the difference between the undisputed dollar amount CenturyLink had paid Verizon at Verizon’s standard monthly rates under the CDP and the dollar amount CenturyLink would have paid had it been billed at the applicable flat rate specified in the Service Agreements.

16. “Dispute Categories” refers to the six categories of substantive allegations that CenturyLink raises in its Formal Complaint with respect to Verizon’s monthly charges or calculation of Billing Credits. *See* Formal Complaint (“Formal Compl.”), Parts I.C.1-6; CTL Exs. 31-36.

17. “Relevant Period” refers to the four-year period from March 1, 2013 to February 28, 2017.

18. “FMS” refers to Verizon’s Facilities Management Service described in Tariff No. 1 § 7.2.13 and Tariff No. 11 § 7.2.16.

INSTRUCTIONS

1. These Interrogatories are to be answered in detail. If any Interrogatory cannot be answered in full after exercising due diligence to secure the information to do so, please state and answer the Interrogatory to the extent possible, specifying any inability to answer the remainder of such Interrogatory, describing the actions you took to answer the Interrogatory, and stating whatever information or knowledge is presently available to you concerning the unanswered portion of said Interrogatory. Unless CenturyLink has made reasonable inquiry and expressly states that reasonable inquiry has been made and that the information known or readily obtainable by CenturyLink is insufficient to enable admission or denial of the request for admission, lack of information or knowledge shall not constitute a reason for failure to respond to an Interrogatory.

2. To the extent that you consider any of the following Interrogatories objectionable, answer so much of each Interrogatory and each part thereof as is not objectionable in your view and separately state that part of each Interrogatory as to which you raise an objection and each ground for such objection. This instruction applies not only to objections to the Interrogatories as such but to the Instructions and Definitions relating to them.

3. If in responding to the Interrogatories you claim ambiguity in any Interrogatory, or in a Definition or Instruction applicable thereto, such claim shall not be utilized as a basis for refusing to respond, but you shall set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the Interrogatory.

4. These Interrogatories are continuing. All Interrogatories shall be construed to request any additional information that is discovered, acquired, created, or generated after the date upon which responses are provided.

5. Each Interrogatory is to be accorded a separate answer, and questions are not to be combined for the purpose of supplying a common answer thereto.

6. In the event it is claimed that any request is premature because your investigation of the subject matter of the request or your discovery is not completed, provide all the information now available to you and supplement the response as soon as further information is found.

7. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

8. The singular includes the plural, and vice versa, so as to make the request more inclusive.

REQUEST FOR INTERROGATORIES

VERIZON'S INTERROGATORY NO. 1: Describe, explain, and produce documents sufficient to identify² the ways in which the methodology used by Frontier in calculating Billing Credits differed from that used by Verizon with respect to each of the six Dispute Categories.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink alleges that Verizon miscalculated the Billing Credits whereas Frontier, to which Verizon sold three operating companies in April 2016, did not.³ CenturyLink argues that the alleged discrepancy between the methodology by which Verizon calculated the Billing Credits, and that by which Frontier calculated the Billing Credits, supports CenturyLink's claim that Verizon's methodology was erroneous. As Verizon does not have access to Frontier's calculation of the Billing Credits that it issued to CenturyLink, the information sought by Interrogatory 1 is not available to Verizon from any other source.

RESPONSE

² To the extent these Interrogatories seek information about documents from CenturyLink, Verizon respectfully requests that the Bureau order CenturyLink to make a document production consistent with these requests, pursuant to 47 C.F.R. § 1.729(h).

³ See Formal Compl. ¶ 38.

VERIZON’S INTERROGATORY NO. 2: Describe, explain, and produce documents sufficient to identify when, how, and from whom CenturyLink first became aware of the alleged errors in Verizon’s calculation of the Billing Credits with respect to each of the six Dispute Categories.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink alleges that Verizon miscalculated Billing Credits that CenturyLink had reviewed and agreed with before Verizon issued them. For each quarter at issue in this case, Verizon provided CenturyLink with monthly and quarterly reporting, which contained sufficient information for CenturyLink to review and confirm Verizon’s calculation of the Billing Credits before providing concurrences in the amount to be issued.⁴ Despite having access to that information, CenturyLink suggests that it could not have disputed Verizon’s Billing Credits earlier than it did.⁵ This Interrogatory seeks information to test that allegation. As Verizon does not have access to CenturyLink’s corporate records, the information sought by Interrogatory 2 is not available to Verizon from any other source.

RESPONSE

⁴ See generally Declaration of P. Mason ¶¶ 24-32.

⁵ See, e.g., Formal Compl. ¶ 77.

VERIZON’S INTERROGATORY NO. 3: Describe the basis for the assertion that CenturyLink’s concurrences in Verizon’s credit calculations reflected merely a “check of Verizon’s underlying math, but not analysis of whether Verizon had properly counted units”⁶ In doing so, describe and explain in detail any review or analysis of Verizon’s proposed Billing Credits that CenturyLink conducted before concurring in those credits, including who performed the analysis, what software or other tools, if any, were used, and the results of such analysis.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink claims that Verizon made it functionally impossible for CenturyLink to dispute the Billing Credits in a timely manner.⁷ Verizon provided CenturyLink with ample opportunity to review and raise issues with Verizon’s calculation of the Billing Credits prior to Verizon’s issuance of the credit, as CenturyLink sometimes did. The extent to which CenturyLink actually reviewed Verizon’s calculation of the Billing Credits is relevant to CenturyLink’s suggestion that it lacked enough information to give informed consent to the Billing Credits. As Verizon does not have access to CenturyLink’s corporate records, the information sought by Interrogatory 3 is not available to Verizon from any other source.

RESPONSE

⁶ Formal Compl. ¶ 83.

⁷ Formal Compl. ¶ 77.

VERIZON’S INTERROGATORY NO. 4: Identify which of the circuits for which Verizon billed CenturyLink during the three-month benchmark period of January, February, and March 2009 CenturyLink believes were “DS3 CLS Billed Units” or “DS1 Billed Units” under the 2009 Service Agreement. *See* 2009 Service Agreement, Ex. B Att. 1.

EXPLANATION

This information is necessary for the resolution of this dispute because, whereas CenturyLink claims that the methodology by which Verizon counted “units” did not comply with the 2009 Service Agreement and contract tariffs, Verizon’s methodology yielded the correct unit counts set forth in the 2009 Service Agreement for the benchmark period.⁸ Information from CenturyLink about which of the circuits were “units” during this time period is relevant to whether CenturyLink’s methodology is consistent with the per-unit flat rates set forth in the 2009 Service Agreement.⁹ As Verizon does not have access to how CenturyLink would count the units during the three-month benchmark of January, February, and March 2009, the information sought by Interrogatory 4 is not available to Verizon from any other source.

RESPONSE

⁸ *See* Declaration of P. Mason ¶¶ 96-101.

⁹ *See* Declaration of C. Alston ¶¶ 26-31 (performing a similar analysis using information for the benchmark period preceding the 2014 Service Agreement).

VERIZON'S INTERROGATORY NO. 5: For each of the twenty-five (25) quarters from March 2009 to May 2015, explain why CenturyLink concurred in the Billing Credit amounts without identifying any of the alleged errors CenturyLink now claims existed.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink claims that Verizon committed errors in calculating the Billing Credits, but CenturyLink concurred in Verizon's proposed credit amounts for 25 consecutive quarters without identifying any of the alleged errors CenturyLink now claims existed. As Verizon does not have access to information about why CenturyLink concurred in the Billing Credits and then attempted to dispute them after CenturyLink had issued the Billing Credits, the information sought by Interrogatory 5 is not available to Verizon from any other source.

RESPONSE

VERIZON’S INTERROGATORY NO. 6: Identify the contractual basis for CenturyLink’s argument that Verizon should have calculated the number of DS3 CLS “units” in FMS territories by dividing the total number of DS0-equivalent channels by 672 and rounding up to the nearest whole number.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink claims that Verizon should have counted “the equivalent number of DS3s utilized by CenturyLink in the FMS LATAs” for the purpose of calculating the Billing Credits.¹⁰ CenturyLink cites no authority to support its proposed methodology. As Verizon disagrees with, and does not understand the basis for CenturyLink’s claims, the information sought by Interrogatory 6 is not available from Verizon or any other source.

RESPONSE

¹⁰ See Formal Compl. ¶ 44.

VERIZON’S INTERROGATORY NO. 7: Describe, explain, and produce documents sufficient to identify any actions, prior to November 2015, that CenturyLink took to optimize its network after Verizon gave notice in December 2008 that it would cease to offer FMS.

EXPLANATION

This information is necessary for the resolution of this dispute because CenturyLink claims that Verizon should have optimized CenturyLink’s network before CenturyLink converted off of FMS. Verizon provided CenturyLink with many years of notice regarding that transition. CenturyLink has known since 2008 that its FMS plan (and with it, Verizon’s network-optimization role) was expiring, and that it was incumbent on CenturyLink to rearrange its own network to facilitate the transition.¹¹ CenturyLink’s claims that Verizon failed to optimize the network turn in part on the extent to which CenturyLink should and could have done so itself.¹² As Verizon has no access to CenturyLink’s corporate records, the information sought by Interrogatory 7 is not available to Verizon from any other source.

RESPONSE

¹¹ See Public Notice, *Comments Invited on Application of Verizon Delaware LLC, Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia Inc. to Discontinue Domestic Telecommunications Services*, 23 FCC Rcd 18108, 18108-09 (2008) (“*FMS Public Notice*”), at 1-2; Tariff No. 1 § 7.2(a)-(c).

¹² See Verizon’s Legal Analysis at 60-65.

VERIZON’S INTERROGATORY NO. 8: Describe the circumstances in which CenturyLink retained Synchronoss Technologies Inc. and/or Sage Management Inc. (collectively, “Sage”) in connection with this matter, including by identifying any financial interest that those entities have in the outcome of this case.

EXPLANATION

This information is necessary for the resolution of this dispute because Sage representatives appear to have been the architects behind CenturyLink’s disputes of the Billing Credits, including the claims that CenturyLink now asserts. The disputes of the Billing Credits were submitted in an unusual, untimely manner, and came primarily from Sage employees rather than CenturyLink employees.¹³ Further, CenturyLink’s case rests almost entirely on a declaration from a Sage consultant, Tiffany Brown. Details about Sage’s relationship with CenturyLink – including Sage’s financial stake in this case, if any – are relevant not only to when and how CenturyLink first discovered the alleged errors at issue, but also to the credibility of its central witness. As Verizon has no access to CenturyLink’s or Sage’s corporate records and agreements, the information sought by Interrogatory 8 is not available to Verizon from any other source.

RESPONSE

¹³ See Declaration of D. Szol ¶¶ 33-34.

VERIZON'S INTERROGATORY NO. 9: Describe and produce documents sufficient to identify Sage's earliest communications with CenturyLink about the six Dispute Categories, including the date on which those communications took place and Sage's preliminary evaluation of the substance of those disputes.

EXPLANATION

This information is necessary for the resolution of this dispute because Sage representatives appear to have been the architects behind CenturyLink's disputes of the Billing Credits, including the claims that CenturyLink now asserts. Verizon believes that Sage shopped these disputes to CenturyLink on a contingency basis and encouraged CenturyLink to bring them. The date that Sage first shopped these disputes to CenturyLink is relevant to CenturyLink's suggestion that it lacked informed consent when concurring in Verizon's quarterly credit calculations. Similarly, Sage's early substantive evaluation of these disputes – including its assessment of the strength or weakness of CenturyLink's claims – is relevant to whether CenturyLink genuinely believes the arguments it now asserts. As Verizon has no access to CenturyLink's or Sage's corporate records and agreements, the information sought by Interrogatory 9 is not available to Verizon from any other source.

RESPONSE

Dated: April 12, 2018

Respectfully submitted,



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Attorneys for Verizon

Tab I

TABLE OF EXHIBITS

Ex. No.	Document Description
1	Credit History Chart
2	Dispute History Chart
3	Email chain ending from Joseph Romero (CTL) to Joseph Aguilar (VZ) re: Action::::QCC - Custom Solutions - 1st QTR 2013.xls, dated July 25, 2013
4	Email chain ending from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Aug 2013, dated Sept. 17, 2013
4.1	Centurylink(QWEST) Monthly Tracking Report_Aug 2013.xlsx
5	Email chain ending from Joseph Aguilar (VZ) to Patricia Mason (VZ) re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Aug 2013, dated Oct. 15, 2013
5.1	QCC - CSP - 2nd Qtr 2013 -.xls
6	Email chain ending from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Nov 2013, dated Jan. 29, 2014
6.1	Centurylink(QWEST) PY5Q3 Tracking Report_wdisputes.xlsx
6.2	PY5Q3 Centurylink BAN (send).xlsx
7	Email chain ending from Joseph Aguilar (VZ) to Patricia Mason (VZ), dated May 6, 2014
8	Email chain ending from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Feb 2014, dated May 9, 2014
8.1	Centurylink(QWEST) Monthly Tracking Report_Feb 2014.xlsx
8.2	Email chain ending from Joseph Aguilar (VZ) to Patricia Mason (VZ) re: FW CenturyLink CSP Qualified Dec Jan Feb, dated May 6, 2014
9	Email chain ending from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Aug 2014 REVISED, dated Nov. 17, 2014
9.1	PY1Q1 Centurylink Monthly TrackReport_wdisputes_Final2.xlsx
10	Email from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-Feb 2015, dated Mar. 30, 2015
10.1	2015_02 Centurylink Monthly TrackReport (send).xlsx
11	Email chain ending from Joseph Aguilar (VZ) to Jamye Bailey (VZ) et al. re: FW: LGT CSP June Thru August Open MRC including states, dated Dec. 23, 2015
11.1	LGT CSP 062015 thru 082015 INCLUDING STATES.XLSX
11.2	BAILEY.xlsx
12	Email chain ending from Joseph Romero (CTL) to Jamye Bailey (VZ) re: CenturyLink-LGT QUARTERLY CSP REPORT, dated Jan. 13, 2016

Ex. No.	Document Description
13	Email chain ending from Anne Grimm (CTL) to Patricia Mason (VZ) re: Centurylink (Qwest) Custom Solution Monthly Tracking Report with Disputes-PY2Q3 2016, dated Feb. 4, 2016
14	Email chain ending from Joseph Romero (CTL) to Patty Lunsford (VZ) re: CSP Report PY2Q4, dated Apr. 25, 2016
15	Email from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report with Disputes-PY2Q4, dated Apr. 26, 2016
15.1	2016_02 Centurylink Monthly TrackReport_w disputes.xlsx
15.2A	Centurylink PY2Q4 DS1 Rev detail.xlsx
15.2B	Centurylink PY2Q4 DS1 wo_Miles Vol detail.xlsx
15.2C	Centurylink PY2Q4 DS3 Rev detail.xlsx
15.2D	Centurylink PY2Q4 DS3 Vol detail.xlsx
15.2E	Centurylink PY2Q4 TBR.xlsx
15.2F	PY2Q4 Clink IPS_VzB Rev.xlsx
15.3	Centurylink PY2Q4 BAN (send).xlsx
16	Email from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-May 2016 REVISED, dated July 8, 2016
16.1	2016_05 Centurylink Monthly TrackReport (070716).xlsx
17	Email from Patricia Mason (VZ) to Anne Grimm (CTL) et al. re: Centurylink PY3Q1, dated July 22, 2016
17.1	PY3Q1 Centurylink Monthly TrackReport.xlsx
17.2A	PY3Q1 CLink DS1 wo_Miles Vol.xlsx
17.2B	PY3Q1 CLink DS3 CLS_CLF Units.xlsx
17.2C	PY3Q1 CLink Foreborne Products.xlsx
17.2D	PY3Q1 CLink IPS&VzB Rev.xlsx
17.2E	PY3Q1 Clink TDM Rev.xlsx
17.2F	PY3Q1 CLink TLS SED.xlsx
17.2G	PY3Q1_Clink TBR.xlsx
18	Email chain ending from Joseph Romero (CTL) to Patty Lunsford (VZ) et al. re: CLink PY3Q1 Claims Report, dated Aug. 1, 2016
19	Email from Bradley Rhotenberry (VZ) to Anne Grimm (CTL) et al. re: FW: CenturyLink (Qwest) Custom Solution Monthly Tracking Report-PY3Q2, dated Sept. 1, 2017
19.1	PY3Q2 Centurylink BAN.xlsx
19.2A	PY3Q2 Centurylink DS1 0 miles.xlsx
19.2B	PY3Q2 Centurylink DS3 CLS_CLF Units.xlsx
19.2C	PY3Q2 Centurylink Forborne Rev.xlsx
19.2D	PY3Q2 Centurylink IPS&VzB.xlsx
19.2E	PY3Q2 Centurylink TBR.xlsx
19.2F	PY3Q2 Centurylink TLS.xlsx
19.3	PY3Q2 Centurylink TrackReport.xlsx

Ex. No.	Document Description
20	Email chain ending from Joseph Romero (CTL) to Henry Ludolph IV (VZ) et al. re: Verizon Secure Message: RE: PY3 Q2 and Q3 claims, dated Apr. 7, 2017
21	Email from Bradley Rhotenberry (VZ) to Anne Grimm (CTL) et al. re: CenturyLink (Qwest) Custom Solution Monthly Tracking Report-PY3Q3, dated Feb. 7, 2017
21.1	PY3Q3 Centurylink BAN.xlsx
21.2	PY3Q3 Centurylink TrackReport.xlsx
21.3A	PY3Q3 Centurylink DS1 w 0 miles.xlsx
21.3B	PY3Q3 Centurylink IPS&VZB.xlsx
21.3C	PY3Q3 Centurylink TBR.xlsx
21.3D	PY3Q3 Centurylink TLS.xlsx
21.3E	PY3Q3 CLink Forborne Rev.xlsx
21.3F	PY3Q3 DS3 CLS_CLF Billed Units.xlsx
22	Email from Bradley Rhotenberry (VZ) to Anne Grimm (CTL) et al. re: FW: CenturyLink (Qwest) Custom Solution Monthly Tracking Report-PY3Q3, dated Sept. 1, 2017
22.1	PY3Q3 Centurylink BAN.xlsx
22.2	PY3Q3 Centurylink TrackReport.xlsx
22.3A	PY3Q3 Centurylink DS1 w 0 miles.xlsx
22.3B	PY3Q3 Centurylink IPS&VZB.xlsx
22.3C	PY3Q3 Centurylink TBR.xlsx
22.3D	PY3Q3 Centurylink TLS.xlsx
22.3E	PY3Q3 CLink Forborne Rev.xlsx
22.3F	PY3Q3 DS3 CLS_CLF Billed Units.xlsx
23	Email from Bradley Rhotenberry (VZ) to Anne Grimm (CTL) et al. re: CenturyLink (Qwest) Custom Solution - PY3Q4, dated Apr. 5, 2017
23.1	PY3Q4 Centurylink BAN.xlsx
23.2	PY3Q4 Centurylink TrackReport.xlsx
23.3A	PY3Q4 CLink DS1 with 0 miles.xlsx
23.3B	PY3Q4 CLink Forborne Rev.xlsx
23.3C	PY3Q4 CLink IPS&VzB.xlsx
23.3D	PY3Q4 CLink TBR.xlsx
23.3E	PY3Q4 CLink TLS.xlsx
23.3F	PY3Q4 DS3 CLS_CLF Billed Units.xlsx
24	Email from Joseph Romero (CTL) to Henry Ludolph IV (VZ), dated Apr. 24, 2017
25	Verizon Services Operations — Customer Financial Services Claims Spreadsheet — BLANK FORM.xls
26	Email from Joseph Romero (CTL) to submit.claims@verizon.com re: FW: CCQWC081041 CenturyLink - Verizon South Claim; BAN: 412M520008196, dated June 19, 2014
26.1	CCQWC081041 CLINKFAC0168B1 CLAIM CENTER GRID 6.14.14.xls
26.2	CCQWC081041 Claim Form.xls
26.3	CLINKFAC0168 Verizon FRP Credit Calculation 06-13-14.doc

Ex. No.	Document Description
26.4	CLINKFAC0168B1 Status SpreadSheet 6.14.14.xls
26.5	CLINKFAC0168B1 Verizon FRP Credit Calculation 06-13-14.xlsx
27	Status_SpreadSheet_40789586.xls
28	Email from Joseph Romero (CTL) to Submit Claims re: CCQWC082582 centurylink - Verizon south Claim; BAN: 412M520008196, dated July 18, 2014
28.1	CCQWC082582_Details.xls
28.2	CCQWC082582 Claim Form.xls
28.3	CCQWC082582 Claim.pdf
29	Email from submit.claims@verizon.com to Joseph Romero (CTL) re: Verizon Claim Status Letter - Batch Number: 40793522, dated July 18, 2014
29.1	Status_SpreadSheet_40793522.xls
29.2	40793522 status letter time date.pdf
30	Status_SpreadSheet_40794911.xls
31	Batch 40795340 claim submission
31.1	40794911 march april may.xlsx
32	Status_SpreadSheet_40794915.xls
33	Batch 40795381 claim submission
33.1	40794915 JUNE JULY AUG.xlsx
34	Status_SpreadSheet_40794919.xls
35	Batch 40795380 claim submission
35.1	40794919 SEPT OCT NOV.xlsx
36	Email chain ending from Joseph Aguilar (VZ) to Lisa Dover (VZ) et al. re: Dispute Custom Solution Plan, dated Feb. 12, 2015
36.1	Qwest - Service Agmt.pdf
36.2	Centurylink Service Agreement.docx
37	Email chain ending from Patrick Lowell (Sage) to Joseph Aguilar et al. re: Dispute associated w/Credit Calculation – Verizon, dated Sept. 26, 2014
37.1	CenturyLink FRP 9-25-2014.pdf
38	Calendar Entry re: CenturyLink Custom Solution Plan, dated Oct. 23, 2014
38.1	Email chain ending from Tiffany Brown (Sage) to Joseph Aguilar (VZ) et al. re: Dispute associated w/Credit Calculation – Verizon, dated Oct. 3, 2014
38.1A	CLINKFAC0168 FRP FMS DS3 CLF EQUIVALENT ANALYSIS 2014-02.xls
38.2	Email chain ending from Joseph Aguilar (VZ) to Patrick Lowell (Sage) et al. re: Dispute associated w/Credit Calculation – Verizon, dated Oct. 2, 2014
38.2A	CenturyLink FRP 9-25-2014.pdf
38.2B	DS3 CLF Circuit Comparison List 06-27-2014.xls
38.3	Email chain ending from Patrick Lowell (Sage) to Joseph Aguilar (VZ) et al. re: Dispute associated w/Credit Calculation – Verizon, dated Sept. 26, 2014
38.3A	CenturyLink FRP 9-25-2014.pdf
39	Calendar Entry re: CenturyLink Custom Solution Plan, dated Oct. 27, 2014
39.1	Email chain ending from Tiffany Brown (Sage) to Joseph Aguilar (VZ) et al. re: Dispute associated w/Credit Calculation – Verizon, dated Oct. 3, 2014
39.1A	CLINKFAC0168 FRP FMS DS3 CLF EQUIVALENT ANALYSIS 2014-02.xls

Ex. No.	Document Description
40	Email from Joseph Aguilar (VZ) to David Szol (VZ) et al. re: Dispute Custom Solution Plan, dated Mar. 12, 2015
40.1	Qwest - Service Agmt.pdf
40.2	Centurylink Service Agreement.docx
40.3	Email chain ending from Patrick Lowell (Sage) to Tiffany Brown (Sage) re: Dispute associated w/Credit Calculation – Verizon, dated Nov. 21, 2014
40.4	Email chain ending from Anne Grimm (CTL) to Patricia Mason (VZ) re: Centurylink (Qwest) Custom Solution Monthly Tracking Report-(PY1Q1), dated Oct. 29, 2014
41	Email chain ending from Susan Kennedy (VZ) to Joseph Aguilar (VZ) et al. re: Dispute Custom Solution Plan, dated Feb. 20, 2015
42	Calendar Entry re: Dispute Associated w/Credit Calculation – Verizon, dated Sept. 24, 2015
42.1	Copy of ACK Claims as of 9-3-15revised.xlsx
42.2	CenturyLink CSP revised.xlsx
42.3	CenturyLink Claim #: CLINKFAC0376 re: Recurring OCC Verizon FRP Credit Calculation, dated Sept. 10, 2015
43	Email chain from Jamye Bailey (VZ) to David Szol (VZ) re: FW: Dispute denial formal response, dated Apr. 20, 2016
43.1	Email chain ending from Joseph Aguilar (VZ) to Patrick Lowell (Sage) et al. re: Dispute associated w/Credit Calculation – Verizon, dated Sept. 15, 2014
44	Schedule Entry re: Synch up on where we stand with outstanding disputes, dated Nov. 4, 2016
45	Schedule Entry re: Initial dispute resolution discussion, dated Nov. 9, 2016
46	Schedule Entry re: Discuss CTL outstanding disputes with VZ, dated Dec. 5, 2016
47	Email from Joseph Romero (CTL) to submit.claims et al. re: FW: CCQWC105568 CenturyLink – Verizon South Claim; BAN: 412M520008196, dated Sept. 15, 2015
47.1	CLINKFAC0376 VZ Status Spreadsheet.xlsx
47.2	CLINKFAC0376 Verizon FRP Credit Calculation (Mar'14-May'14) 09-10-15.xlsx
47.3	CLINKFAC0376 Verizon FRP Credit Calculation (Mar'14-May'14) 09-10-15.pdf
47.4	CCQWC105568 CLINKFAC0376 CLAIM CENTER GRID.xls
48	Email from submit.claims@verizon.com to Joseph Romero (CTL) re: Verizon Rejected Claim - Batch Number: 40860467, Sept. 15, 2015
48.1	CLINKFAC0376 VZ Status Spreadsheet.xlsx
48.2	40860467 time and date for reject.pdf
49	Email from submit.claims@verizon.com to Joseph Romero (CTL) re: Verizon Rejected Claim - Batch Number: 40860438, Sept. 17, 2015
49.1	Status_SpreadSheet_40860438.xls
49.2	40860438 time and date.pdf
50	Email from submit.claims@verizon.com to Joseph Romero (CTL) re: Verizon Claim Status Letter - Batch Number: 40889583, dated Feb. 5, 2016
50.1	Copy of Status_SpreadSheet_40889583.xls

Ex. No.	Document Description
51	Email chain ending from Joseph Romero (CTL) to Joseph Aguilar (VZ) re: FW: \$1M claims FMS Joe Romero, Oct. 29, 2015
52	Email from submit.claims@verizon.com to Joseph Romero (CTL) re: Verizon Rejected Claim - Batch Number: 40868954, Nov. 19, 2015
52.1	Status_SpreadSheet_40868954.xls
52.2	40868954 time date.pdf
53	Excerpt #1 of December 2013 CSR.pdf
54	Excerpt #2 of December 2013 CSR.pdf
55	Table 4 Analysis re DS3s and Riders Chart.xlsx
56	Excerpt #1 of January 2014 CSR.pdf
57	Excerpt #2 of January 2014 CSR.pdf
58	Analysis of CTL Table 5.xlsx
59	Excerpt #3 of January 2014 CSR.pdf
60	Analysis of CTL Ex. 32.xlsx
61	Category 2 USOC Analysis.xlsx
62	July 2014 CSR Excerpt for BAN #1.pdf
63	July 2014 CSR Excerpt for BAN #2.pdf
64	Analysis of CTL Ex. 33.xlsx
65	Analysis of CLF v CLS Classification.xlsx
66	Analysis of CTL Ex. 34.xlsx
67	Analysis of CTL Ex. 35.xlsx
68	Clink 2009 DS3 Vol_rate calc.xlsx
69	Email chain ending from David Szol (VZ) to Patricia Mason (VZ), dated Feb. 8, 2018
70	Status_SpreadSheet_40860411.xls
71	Email chain ending from Karen Johnson Sawyer (VZ) to Joseph Romero (CTL) re: CTL CSP BANS, dated Feb. 22, 2018
71.1	201M110146322 2-20-18 Invoice.pdf (Omitted to conserve paper)
72	CONFIDENTIAL - CTL Verizon FRP Circuit List Oct'13 to Dec'13 09-06-16.xls
73	2014 Flat Rate Calculation.xlsx